

May 5, 2026**Addendum No. 06****File Reference Number: RFP 2026 022****Title: Building Condition Assessment****RE: Clarifications/Questions**

CLARIFICATIONS / QUESTIONS:

Item 1: Please note that ONTC omitted Appendix D - Schedule of Prices v.3 from Addendum No. 05, in error. Please see revised Appendix D - Schedule of Prices (Addendum No. 06), which is attached separately.

Item 2: With reference to the Termination Clause 65(b), would ONTC consider providing prior notice of default and reasonable opportunity to cure, before the agreement is terminated?

Answer: Yes, ONTC confirms that it will provide a fourteen (14) day rectification period in order to cure the default after notice of a breach is given and, prior to termination of the agreement. Please see attached revised agreement.

Item 3: Would ONTC consider the following with reference to the Indemnity and Limitation of Liability Clause 52:

- a. Can the indemnity be limited to losses to the extent caused by the Engineering Consultant's negligent acts or omissions, and to the types of losses customarily insurable under professional liability insurance?
- b. Would ONTC consider modifying the indemnity so that the Consultant's obligation is to indemnify for proven losses, rather than a duty to defend ongoing proceedings?
- c. Given the absence of an overall limitation of liability, would ONTC be open to discussing a reasonable aggregate cap tied to the Consultant's fees or available insurance limits, consistent with industry practice for professional services? This would help ensure project risks remain commercially manageable and insurable over the life of the assignment.

Answer: ONTC advises that no further changes beyond those identified in Item 2, will be made to the agreement.

Item 4: Would ONTC please confirm whether leaving any roles or fields blank in Appendix D - Schedule of Prices, would result in a non-compliant submission or point deduction, or whether only applicable items are required to be completed?

Answer: ONTC advises that leaving any roles or fields blank in Appendix D – Schedule of Prices will not result in a non-compliant submission or point deduction, however, proponents are encouraged to provide all information requested.

Item 5: Would ONTC confirm whether it requires materials testing at any of the locations listed in the RFP?

Answer: ONTC advises proponents to refer to Items 15, 21, and 31 of Addendum No. 04.

Item 6: Will ONTC confirm whether a flagman will be provided by ONTC for inspections near active rails? And will ONTC bear the cost of permitting fees and flagmen during inspections?

Answer: ONTC advises that it will provide flag protection as required. The successful proponent will be required to provide ONTC with two weeks' notice to make proper arrangements. A safety orientation will be held prior to site visits.

Item 7: Would ONTC confirm whether CCTV inspections are required for sanitary sewers and water lines within the buildings, or if a condition assessment based on observed performance and available historical data would be acceptable?

Answer: ONTC advises proponents to refer to Item 28 of Addendum No. 04.

Item 8: Would ONTC confirm whether the Contractor Health and Safety Responsibility Agreement and the Contract Safety Pre-Qualification Form located at Appendix E, must be submitted with the proponent's proposal?

Answer: Yes, ONTC confirms that the Contractor Health and Safety Responsibility Agreement and the Contract Safety Pre-Qualification Form located at Appendix E must be submitted within the proponent's proposal.

Item 9: The physical requirements for exterior tags are significant and will require offsite printing and additional mobilizations to site in order to install. Would ONTC be flexible in this standard and allow for application of tags that meet the lower standards instead? The cost of printing and additional mobilizations will likely exceed the replacement costs for tags of lower standards.

Answer: ONTC advises that proponents are encouraged to provide the pricing per tag as requested in Appendix D - Schedule of Prices, however, proponents may propose a different

approach as part of their submissions, for ONTC's consideration. Please refer to Item 12 of Addendum No. 05. ONTC does not currently have tagging for equipment.

Item 10: If tagging of assets is included in the award, will the tagging scope be considered part of the base scope assessments? Or should it be considered a separate scope? If it will be considered separate, at least two mobilizations to each site will apply.

Answer: ONTC advises that equipment tagging is part of the optional services and does not form part of the base scope. Such services may be added at ONTC's sole discretion through a future Change Order, subject to approval. If the optional service of equipment tagging is awarded at the time of the base scope award, ONTC should receive a discount as per Appendix D - Schedule of Prices - Optional Services Pricing - Commercial Structure table.

Item 11: Would ONTC confirm if an extension may be granted for the submission deadline. The submitted questions that have not yet been answered will likely significantly impact the scope of work. We would like to propose a new deadline of 2 weeks following the release of the final addendum.

Answer: ONTC advises proponents to refer to Item 3 of Addendum No. 02. ONTC will not consider any further extensions beyond the date of Friday, May 8th, 2026, at 2:00:00 PM EDT.

Item 12: Would ONTC confirm how many buildings have fire protection systems requiring review?

Answer: ONTC advises that all of ONTC's buildings have fire protection systems, these systems differ depending on use of building, occupancy and size. Please refer to the BCA reports shared within the SharePoint Directory.

The RFP Documents have been revised and sections affected are noted below. The revised RFP sections supersede all previous RFP Document versions for the said documents.

Delete Document:	Replace with Revised Document:
Appendix D - Schedule of Prices	Appendix D - Schedule of Prices (Addendum No. 06)
Draft Agreement	Draft Agreement (Appendix No. 06)

This Addendum hereby forms part of the RFP.

Regards,

Nicole Laplante
Procurement Contracts Specialist
nicole.laplante@ontarionorthland.ca

THIS AGREEMENT FOR PROFESSIONAL SERVICES is made effective on **XXX** (the “Effective Date”)

BETWEEN:

ONTARIO NORTHLAND TRANSPORTATION COMMISSION

(“**ONTC**”)

AND

XXX

(the “**Engineering Consultant**”)

THE PARTIES AGREE AS FOLLOWS:

INTERPRETATION

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

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

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

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

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

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

“**Change Order**” has the meaning set out in Section 21;

“**Confidential Information**” includes information, whether oral, written, visual, electronic, or in any other form, relating in any way to this Agreement, which is identified as confidential or that would reasonably be considered as being confidential that was prepared by or received from ONTC, its subsidiaries, representatives or agents and all other information related to

the Agreement or acquired in connection with the Agreement, and includes Personal Information. "Confidential Information" does not include any portions of the Confidential Information that (a) at the time of disclosure was in the public domain; (b) after disclosure hereunder, is published or otherwise becomes part of the public domain through no fault of the Engineering Consultant; or (c) is received from an independent third party who had obtained the Confidential Information lawfully and was under no obligation of secrecy or duty of confidentiality owed to ONTC, but the foregoing exclusions shall in no way limit the meaning of Personal Information or the obligations attaching thereto under the Agreement or at law;

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

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

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

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

"Equipment" means all machinery and equipment, either operated or not operated, that is owned or leased by the Engineering Consultant and required for performing the Services, but is not incorporated into the Work Product;

"Fees" has the meaning set out in Section 24;

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

"Force Majeure Event" means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, adverse weather conditions which are materially more adverse than could reasonably be expected, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, quarantine restriction, strike, lockout or other labour disturbance, major equipment malfunction, governmental embargo, government priorities, or changes in the laws; provided such event is not caused by the affected party's negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Services;

"Intellectual Property" means any improvement, invention or discovery, whether or not patented or patentable, any technical data, know-how or trade secret, any design, any computer software or any work subject to copyright, whether or not such design or copyright is registered or registrable and all intellectual property rights contained, embedded or

disclosed in the Services;

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

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

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

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

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

“**Personnel**” means Engineering Consultant Parties who/which provide Services in accordance with the Agreement;

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

“**Services**” has the meaning set out in Section 6;

“**Standard of Care**” has the meaning set out in Section 11;

“**Term**” has the meaning set out in Section 5; and

“**Work Product**” includes information in any form prepared by or for the Engineering Consultant as part of the Services and includes without limitation the Deliverables.

2. **Construing this Agreement.** This Agreement is to be construed and interpreted with all changes in number and gender as may be required by the context. The obligations of the parties contained in this Agreement have, where applicable, the status of representations, warranties and covenants by the respective obligated Party. Time is of the essence of this Agreement, including if any extension of time is permitted.
3. **Contract Documents.** The following Schedules attached hereto form part of this Agreement:
 - (a) Schedule A – Deliverables/Scope of Work; and
 - (b) Schedule B – Engineering Consultant’s Submission.
4. **Precedence.** Subject to any contrary intention elsewhere in this Agreement, in case of any inconsistency or conflict among the Schedules and the body of this Agreement, the documents shall prevail in the following order, but only to the extent necessary to resolve the

conflict or inconsistency:

- (a) the body of this Agreement;
- (b) Schedule A (Deliverables/Scope of Work);
- (c) Schedule B (Engineering Consultant's Submission); and,
- (d) any other documents incorporated by reference in any of the foregoing.

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

TERM

- 5. **Term.** This Agreement will commence on the Effective Date and will remain in full force and effect until **XXX**, unless earlier terminated pursuant to the provisions of this Agreement (the "**Term**").

PROVISION OF THE SERVICES

- 6. **Retainer.** ONTC hereby retains the Engineering Consultant to provide the engineering, architectural and other professional services as more particularly described in Schedule A and Schedule B (the "**Services**").
- 7. **No Guarantee; Discontinuance of Services.** The Services shall be provided as required by ONTC. ONTC is not guaranteeing any minimum level of use of the Services. Despite anything to the contrary contained in this Agreement, ONTC may at any time, for any reason, discontinue part of the Services in which event ONTC shall pay the Engineering Consultant for the chargeable amounts for the discontinued part of the Services up to the date that ONTC gives the Engineering Consultant Notice of its decision to discontinue the Services, or a later date if work, already commenced by the Engineering Consultant, cannot reasonably be discontinued until such later date. This shall be the only remedy of the Engineering Consultant for discontinuance of part of the Services.
- 8. **Equipment.** The Engineering Consultant will supply Equipment that is in good repair and meets all safety standards and regulations. The Engineering Consultant shall be responsible for all costs and expenses for the Equipment including, but not limited to, repair, maintenance, replacement, insurance and fuel. In the event the Equipment fails to operate correctly during provision of the Services, the Engineering Consultant shall be responsible for all costs relating to any delay in the work of the Personnel, including compensation for the Personnel. In no event will ONTC be charged for any costs relating to the Personnel or the Equipment if the Personnel are unable to work due to Equipment failure or breakdown.
- 9. **Use of ONTC Equipment.** The Engineering Consultant may, during the provision of Services, use ONTC equipment at its own risk and with the prior approval of ONTC. The Engineering Consultant shall be responsible for any damage to ONTC property or any third

party's property or any bodily injury to or death of any person relating to the Engineering Consultant's use of ONTC equipment. ONTC makes no representations that its equipment is in good working or is suitable for any particular purpose and ONTC shall not be responsible for any injuries to or death of Personnel of the Engineering Consultant or damage to any property of the Engineering Consultant which results from the use by the Engineering Consultant of ONTC equipment. The Engineering Consultant shall indemnify and hold harmless ONTC for any claims for Losses made against ONTC relating to the use by the Engineering Consultant of ONTC equipment.

10. **Personnel.** The Engineering Consultant shall provide the Services using the Personnel proposed in their submission attached as Schedule B. The Engineering Consultant shall not subcontract the provision of any Services nor change the Personnel without ONTC's prior written approval. The Engineering Consultant shall coordinate the activities of the Personnel, be solely responsible for their every act or omission, and for payment of all costs associated with them.
11. **Standard of Care.** The Engineering Consultant shall carry out the Services in conformity with the standard of care, skill and diligence normally provided by a well-qualified and experienced professional person in the performance of similar services for a similar project at the time and place the Services are being provided. The Engineering Consultant shall give ONTC the full benefit of its skills, qualification, experience, knowledge and professional expertise (the "**Standard of Care**"). Any Services provided by Personnel shall meet or exceed the Standard of Care and the Engineering Consultant shall be fully responsible therefor.
12. **Representations by the Engineering Consultant.** The Engineering Consultant represents and warrants that:
 - (a) the Engineering Consultant will provide the Service in compliance with all Applicable Laws and the terms of this Agreement;
 - (b) the Engineering Consultant has and will continue to have throughout the Term of this Agreement sufficient competent personnel and equipment in good working order to perform the Services as required by the terms of this Agreement and the personnel it assigns to perform the Services, whether directly or through subcontractors, have the professional expertise, skills, know-how and resources necessary to perform the Services;
 - (c) the Engineering Consultant and Personnel possess all licenses, approvals, permits, registrations, professional designations and memberships necessary to perform the Services;
 - (d) the Engineering Consultant has the financial means to meet its obligations to its employees and subcontractors and to perform the Services; and
 - (e) there are no pending, threatened, or anticipated claims or litigation against the Engineering Consultant or other circumstances that would have a material effect on the financial ability of the Engineering Consultant to perform the Services.
13. **Vendor Performance Policy.** ONTC has a Vendor Performance Policy which requires ONTC to complete an evaluation of the Engineering Consultant's performance of its obligations under this Agreement. The performance evaluation of the Engineering Consultant

for the supply of these Services will be used in the assessment of the Engineering Consultant's proposals in response to future procurements. The performance evaluation may also result in the Engineering Consultant being disqualified from submitting proposals in response to future procurements in accordance with the terms of the policy. The policy can be found at <http://ontarionorthland.ca/en/requests-tenders>.

14. **Reports.** The Engineering Consultant shall provide the reports set out in Schedule A, and shall, upon request of ONTC, provide such other reports to ONTC, in a form and substance satisfactory to ONTC, about the Services.
15. **Possession.** ONTC may take possession of and use any completed or partially completed Deliverables.
16. **Form of Deliverables.** The provision of all information, documents and Deliverables by the Engineering Consultant to ONTC shall be in the native file format (e.g., CAD format) as approved by ONTC along with a PDF and/or hard copy. The Engineering Consultant shall not charge ONTC any additional fee for the provision of the Deliverables in their native file format. The Engineering Consultant shall not be held liable for native file format files to the extent they are subsequently amended or changed by ONTC without the consent of the Engineering Consultant.
17. **Schedule.** Engineering Consultant shall provide the Services within the times/schedule specified in Schedule A and shall be responsible for all costs of meeting such timing, unless otherwise agreed by ONTC. If costs higher than set out in this Agreement become necessary to ensure delivery of the Services by the timelines in the workplan, then the Engineering Consultant shall be fully responsible for such higher costs. If the Engineering Consultant fails to meet the times/schedule set out in Schedule A, ONTC may, at the sole cost of the Engineering Consultant and without limiting any other remedy ONTC may have at law or under this Agreement:
 - (a) retain other persons to complete the Services, and deduct the cost of such retention from any money payable by ONTC to the Engineering Consultant or, if no money is payable, invoice the Engineering Consultant for the cost; and
 - (b) the Engineering Consultant shall be responsible for all Losses, including incidental, indirect and special Losses, suffered by ONTC due to a schedule delay.
18. **Software.** The Engineering Consultant shall consult with ONTC and obtain prior written approval for the use of any software in its performance of the Services or generation of Work Product.
19. **Regulatory Approval.** Unless otherwise provided in this Agreement, where the work of the Engineering Consultant is subject to the approval or review of an authority, government or agency other than ONTC, applications for such approval or review shall be the responsibility of the Engineering Consultant. The Engineering Consultant shall submit such applications through the offices of ONTC, and, unless authorized by ONTC, the Engineering Consultant shall not seek or obtain any such approval or review by direct contact with such authority, government or agency.
20. **Inadequate Services.** The Engineering Consultant shall immediately correct at its own cost and expense, upon written request of ONTC, any Services not in conformity with the terms

and conditions of this Agreement, including with the Standard of Care, except to the extent such non-conforming Services were caused by a person who is not a Engineering Consultant Party.

CHANGES

21. **Changes.** Changes of any kind to the Services shall only be made by the Engineering Consultant upon receipt of a written change order signed by an authorized member of each party (each, a “**Change Order**”) or a Change Directive (as defined below). ONTC may at any time by issuing a Change Order or Change Directive make a change in the Services to be provided by the Engineering Consultant. The Change Order shall specify the details of the change in scope of the Services, any agreed adjustment to the Fees in respect of the change in scope of the Services and any agreed adjustment to the time for performance of the Services, whether an increase or reduction.
22. **Change Directive.** Prior to finalization of a Change Order, ONTC may instruct the Engineering Consultant to proceed with additional or changed work by issuing a directive signed by an authorised member of ONTC (each, a “**Change Directive**”). Upon receipt of a Change Directive, the Engineering Consultant shall immediately proceed with the changes to the Services as identified therein. The Parties shall then seek to finalize a Change Order as soon as commercially reasonable.
23. **Unauthorized Work.** ONTC shall have no liability whatsoever for any claim for payment for additional services provided or costs incurred by the Engineering Consultant which have not been authorised in advance by ONTC by way of a Change Order.

FEES

24. **Fees.** The fees which are the subject of this Agreement are set out in Schedule B (the “**Fees**”).
25. **Payment.** Except as otherwise provided for in this Agreement, ONTC shall, within thirty (30) days after receipt of an invoice, pay the Engineering Consultant the properly charged amounts shown on the invoice.
26. **Disbursements and Expenses.** The Engineering Consultant shall, at its sole cost, and at no cost to ONTC, except as specifically provided in this Agreement or agreed to by ONTC in writing, obtain and supply all work, labour, Personnel, travel, plant, accommodations, equipment, materials, supplies and administrative, technical or other support necessary to provide the Services, including insurance, local or long distance telephone, facsimile, postage, or other communication costs, and photocopying, printing or other reproduction costs. For greater certainty, the Engineering Consultant shall not, unless specifically agreed to by ONTC in writing, charge any such expenses to ONTC and such expenses are deemed to be included in the Fees.
27. **Travel Costs.** ONTC will only pay travel costs for the Engineering Consultant’s Personnel which are preapproved in writing by ONTC, and which comply with the amounts and subject to the provisions of the Management Board of Cabinet Travel, Hospitality and Meal Directive effective January 2020.
28. **Submission of Invoices.** The Engineering Consultant shall submit its invoice for the

performance of the Services to ONTC [monthly]. Invoices shall be submitted to the ONTC Representative and to pay.inv@ontarionorthland.ca. ONTC will review the invoices and, if approved, process the same for payment subject to any dispute or right of set off by ONTC. Any disputed items will promptly be brought to the attention of the Engineering Consultant.

29. **Content of Invoices.** All invoices shall be fully detailed in its makeup, accompanied by all substantiating details requested by ONTC and must show the applicable taxes as a separate line item and in sufficient detail, a cumulative invoiced to date figure and a monthly updated anticipated forecast final account figure.
30. **No Acceptance.** No payments made by ONTC under this Agreement shall constitute an acceptance of any portion of the Services which is not in accordance with the requirements of this Agreement.
31. **Records and Audit.** The Engineering Consultant shall maintain up-to-date and accurate records, which clearly identify the Engineering Consultant's time and expenses in respect of Services to be paid in accordance with this Agreement. If requested by ONTC, the Engineering Consultant shall make available to ONTC full accounts, records, receipts, vouchers and documents for the purpose of substantiating its charges related to the Services.
32. **Invoice Review.** Despite any other provision in this Agreement, ONTC may obtain a review of any invoice rendered by the Engineering Consultant and is not required to pay such invoice until the review has been completed. ONTC is not required to pay any interest on any invoice in respect of any time during which such invoice is under review.

CONFIDENTIAL INFORMATION

33. **General Confidentiality Requirements.** The Engineering Consultant shall:
 - (a) ensure that all Engineering Consultant Parties comply with all the provisions of this Agreement relating to Confidential Information and the Engineering Consultant shall be responsible for any failure by any Engineering Consultant Party to do so;
 - (b) use Confidential Information only for the purposes of providing the Services;
 - (c) not copy or transcribe into another form, any Confidential Information received from ONTC except as reasonably necessary; and,
 - (d) upon the termination of this Agreement, or earlier upon the request of ONTC, promptly destroy or return (as directed by ONTC) all Confidential Information disclosed to the Engineering Consultant.
34. **Keeping Confidential Information Confidential.** Except as provided in this Agreement, the Engineering Consultant shall keep confidential all Confidential Information collected on behalf of ONTC or disclosed to it by ONTC and shall protect the Confidential Information disclosed to it by ONTC, in the same manner and to the same extent that it protects its own Confidential Information. This obligation shall survive the termination of this Agreement.
35. **Disclosing Confidential Information.** The Engineering Consultant may disclose Confidential Information if:

- (a) ONTC approves the disclosure in writing;
 - (b) the Engineering Consultant is required by law to disclose it, in which case it shall promptly notify ONTC to allow ONTC the opportunity to intervene to prevent the disclosure;
 - (c) the Confidential Information is generally and publicly available;
 - (d) the Confidential Information was disclosed to the Engineering Consultant on a non-confidential basis from a source other than ONTC which the Engineering Consultant believes is not prohibited from disclosing such information as a result of an obligation in favour of ONTC;
 - (e) is developed by the Engineering Consultant independently of, or was known by the Engineering Consultant prior to, any disclosure of such information made by ONTC; or
 - (f) to the extent required by an order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or other administrative or legal process, or by applicable regulatory or professional standards or in connection with any judicial or other proceeding relating to Engineering Consultant's Services to ONTC or this Agreement.
36. **FIPPA.** The Engineering Consultant specifically acknowledges that ONTC is subject to FIPPA, and that ONTC may be compelled by law to disclose certain information provided by the Engineering Consultant. Where the Engineering Consultant is collecting Personal Information on behalf of ONTC, the Engineering Consultant must comply with the provisions in FIPPA regarding the collection, retention, use, disclosure and disposal of Personal Information.
37. **Breach of Confidentiality.** The Engineering Consultant acknowledges and expressly agrees that any breach by it of this Agreement which does or may result in loss of confidentiality of the Confidential Information or a unauthorized release of Personal Information would cause ONTC irreparable harm for which damages would not be an adequate remedy. If the Engineering Consultant breaches the confidentiality provisions of this Agreement, ONTC shall have the right to seek injunctive relief against the continuing or further breach by the Engineering Consultant, without the necessity of proof of actual damages. The right to seek injunctive relief without the necessity of proof of damages shall be in addition to any other right which ONTC may have under this Agreement or otherwise in law or in equity. This section shall continue to bind the Engineering Consultant after the expiry or termination of this Agreement.

PERSONAL INFORMATION

38. **Purpose.** Personal Information may be received by, created, collected, processed, used, maintained, disclosed, or disposed of by the Engineering Consultant only for the purpose of providing the Services under the Agreement, and in strict compliance with Privacy Laws and ONTC policies related to the protection of Personal Information.
39. **Security.** The Engineering Consultant will implement appropriate technical and organizational measures designed to keep Personal Information secure and to prevent any accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal

Information. The Engineering Consultant shall advise ONTC promptly of any anticipated or actual loss of Personal Information.

40. **Third Party.** The Engineering Consultant shall not disclose or transfer any records containing Personal Information to a third party except with the informed prior written consent of ONTC.
41. **Return.** The Engineering Consultant shall return all of ONTC's Personal Information when this Agreement ends or earlier if requested by ONTC.
42. **Survival:** The parts "CONFIDENTIAL INFORMATION" and "PERSONAL INFORMATION" shall survive the expiry or termination of this Agreement.
43. **Precedence:** The privacy provisions of FIPPA and this part "PERSONAL INFORMATION" shall supersede the provisions of the part "CONFIDENTIAL INFORMATION" with respect to the collection, retention, use, disclosure and disposal of Personal Information.

INTELLECTUAL PROPERTY

44. **Intellectual Property.** The Engineering Consultant has developed and uses certain Intellectual Property in respect of the provision of the Services (the "**Background Intellectual Property**"). ONTC acknowledges that the Background Intellectual Property is the sole and exclusive property of the Engineering Consultant and ONTC shall not acquire any right, title or interest therein other than the right to use and access the Background Intellectual Property during the Term. For greater certainty, ONTC is specifically prohibited from reproducing or recreating any such Background Intellectual Property either during the Term or at any time thereafter.
45. **Work Product.** All information in any form prepared by or for the Engineering Consultant as which forms part of the Work Product, unless approved by ONTC in writing to the contrary, shall vest in ONTC and is the sole and absolute property of ONTC as and when created. The Engineering Consultant hereby irrevocably assigns and conveys, and agrees to assign and convey, without further consideration, all right, title and interest in and to the Intellectual Property in the Work Product, in perpetuity and throughout the world, to ONTC and its successors and assigns.
46. **Use of Intellectual Property.** The Engineering Consultant shall promptly sign all documents and take all actions that may be necessary to ensure that ONTC owns all the rights in and to the Work Product Intellectual Property. Except for retaining a copy as required by any applicable law, the Engineering Consultant shall return to ONTC or destroy, at the option of ONTC, all Intellectual Property in the Work Product at the expiry or termination of this Agreement. The Engineering Consultant shall not under any circumstances use the Work Product for the benefit of any other client of the Engineering Consultant.
47. **Licence.** The Engineering Consultant shall provide ONTC, at the Engineering Consultant's cost, with a perpetual, irrevocable, royalty-free, non-exclusive, fully transferable, fully paid-up licence to:
 - (a) use such of the Background Intellectual Property as is required for the use of the Intellectual Property in the Work Product, in whole or in part;

- (b) disclose any Background Intellectual Property to any person who requires such Background Intellectual Property in respect of any of the actions referred to in (a);
 - (c) use, reproduce, copy, transmit, modify and create derivative works from any Background Intellectual Property in respect of any of the actions referred to in (a); and,
 - (d) sublicense any or all rights granted to ONTC under this section to any person who provides goods or services to ONTC in respect of any of the actions referred to in (a).
48. **Moral Rights.** The Engineering Consultant waives all Moral Rights in the Work Product as against ONTC, and its successors, assigns and licensees. The Engineering Consultant shall ensure that anyone other than the Engineering Consultant who has any Moral Rights in the Work Product, waives all such Moral Rights as against the Engineering Consultant and ONTC.
49. **Representations.** The Engineering Consultant represents and warrants to ONTC as follows:
- (a) there is not a claim, demand or suit respecting any part of the Work Product, the Intellectual Property or the Background Intellectual Property;
 - (b) there is no potential claim, demand or suit that the Engineering Consultant is aware of respecting the Work Product, the Intellectual Property or the Background Intellectual Property, in whole or in part, that could affect the performance, function or use of the Work Product, Intellectual Property or Background Intellectual Property, in whole or in part, as intended by this Agreement;
 - (c) before transferring ownership in the Work Product to ONTC, the Engineering Consultant is the exclusive owner of, and has good and marketable title to, all the Work Product. Except in regard to the Background Intellectual Property, there is no ownership interest, agreement option or other right, title, benefit, interest or privilege outstanding in favour of any person for the purchase or licence from the Engineering Consultant of, or any lien in favour of any other person in, any of the Work Product; and
 - (d) the Engineering Consultant has the right to grant the licence rights in the Background Intellectual Property and will obtain such rights from subcontractors as required to comply with this Agreement.
50. **Third Party Intellectual Property Rights.** The Engineering Consultant shall be liable for and indemnify and hold harmless ONTC against any liability, whether direct or indirect, or Losses arising out of a claim by any third party against ONTC alleging that the Intellectual Property in the Work Product and its use by ONTC, infringes any third party Intellectual Property rights. This section shall survive the termination of this Agreement.
51. **Infringement Defiance.** ONTC shall have the first right to conduct and exercise sole control of any defense of an alleged violation or infringement by a third party of the Intellectual Property in the Work Product. ONTC shall have the sole right to instruct counsel with respect to all steps in such litigation, including the settlement thereof, after consulting in good faith with the Engineering Consultant. The Engineering Consultant shall co-operate in any such proceeding by providing relevant documents, testimony, and such other assistance as may reasonably be requested by ONTC from time to time.

INDEMNITY AND LIMITATION OF LIABILITY

52. **General Indemnity.** The Engineering Consultant shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses which may arise as a result of any breach of the terms of this Agreement by the Engineering Consultant or by any act or omission of the Engineering Consultant or a Engineering Consultant Party, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or an ONTC Party or those for whom it is in law responsible. The Engineering Consultant shall, at ONTC's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and material relevant to the possible Loss. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.
53. **Specific Indemnities.** The Engineering Consultant shall indemnify ONTC and ONTC Parties and save them harmless from and against all Losses incurred by ONTC arising from:
- (a) any decision or interpretation by any court or governmental authority that: (i) any of the Engineering Consultant Parties is an employee of ONTC; or (ii) ONTC is liable to pay statutory contributions or deductions in respect of any of the Engineering Consultant Parties under any Laws, including employment insurance, provincial health insurance, income tax or other employment matters;
 - (b) any health, medical disability or similar claims which the Engineering Consultant or Engineering Consultant Parties may have during or after the Term of this Agreement;
 - (c) any claim by any third party against ONTC alleging that the Work Product and its use by ONTC infringes any Intellectual Property Rights;
 - (d) any claim against ONTC arising from the failure of the Engineering Consultant to protect the confidentiality of Confidential Information; and
 - (e) safety infractions committed by the Engineering Consultant under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act*.
54. **Bodily Injury and Property Damage.** The Engineering Consultant shall make full and complete compensation for any bodily injury or death to any person and for any damage caused to ONTC's physical property by an act or omission of the Engineering Consultant or a Engineering Consultant Party during the provision of the Services.
55. **Engineering Consultant Losses.** The Engineering Consultant shall be liable for any claims arising from any personal injuries to or death of any of the Engineering Consultant Parties or from any loss of or damage to any property belonging to the Engineering Consultant or Engineering Consultant Parties during the provision of the Services unless caused by the negligent act or omission of ONTC or ONTC Parties.
56. **Waiver.** The Engineering Consultant waives against ONTC and ONTC Parties any claims of any kind whether directly or indirectly arising out of or connected with the existence of this Agreement or for any injury to or death of any person or for any loss of or damage to any

property belonging to the Engineering Consultant or Engineering Consultant Parties and for any loss or damage of the Engineering Consultant unless caused by the negligent act or omission of ONTC or ONTC Parties.

57. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,
- (a) neither party shall be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether a party has been advised of the possibility of such damages; and
 - (b) any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the Term shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.
58. **Survival.** The sections in this part “**INDEMNITY AND LIMITATION OF LIABILITY**” shall survive the expiry or termination of this Agreement.

INSURANCE

59. **Insurance Coverage.** Without restricting the generality of the provisions in this Agreement related to indemnification, the Engineering Consultant shall obtain, and for as long as this Agreement is in effect, maintain, pay for and, upon request by ONTC from time to time, provide evidence, satisfactory to ONTC, of the following insurance coverages, all taken out with insurers licensed to transact insurance business in Ontario and satisfactory to ONTC:
- (a) Commercial General Liability Insurance with a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence, with no limitations on or exclusions from coverage arising from working on or around railway property, including environmental and pollution liability, bodily injury, personal injury, death and damage to property, including loss of use thereof, in a form satisfactory to ONTC and endorsed to provide “Ontario Northland Transportation Commission” with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage and including “Ontario Northland Transportation Commission” as an additional insured;
 - (b) Automobile Liability Insurance with a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence, including bodily injury, death and damage to property, endorsed to provide “Ontario Northland Transportation Commission” with not less than thirty (30) days’ notice, in advance, of any cancellation, change or amendment restricting coverage and in the following forms: standard owner’s form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Engineering Consultant, and standard non-owned automobile form policy including standard contractual liability endorsement; and
 - (c) Professional Liability Insurance with a limit of not less than two million dollars (\$2,000,000) inclusive per occurrence and subject to an annual aggregate of not less than two million dollars (\$2,000,000).

60. **WSIB.** If the Engineering Consultant is subject to the *Workplace Safety and Insurance Act*, it shall submit a valid Workplace Safety and Insurance Board clearance certificate of Workplace Safety and Insurance Act coverage to ONTC upon request.
61. **No Waiver.** If ONTC fails to demand any certificate for insurance or otherwise fails to demand other evidence of full compliance with this part or fails to identify a defect from evidence provided, ONTC has not waived, and ONTC will not be deemed to have waived, any of the Engineering Consultant's obligations regarding insurance. The Engineering Consultant will ensure that each insurer which provides insurance will, as applicable, provide a waiver of subrogation to ONTC.

CONFLICT OF INTEREST

62. **Conflict of Interest.** The Engineering Consultant shall:
- (a) avoid any Conflict of Interest in the performance of the Services and execution of this Agreement; and
 - (b) immediately disclose to ONTC any actual or potential Conflict of Interest that arises during the performance of the Services and execution of the Agreement.
63. **Resolution of Conflict of Interest.** If a potential or actual Conflict of Interest of the Engineering Consultant arises during the Engineering Consultant's provision of the Services,
- (a) ONTC has the sole right to determine whether any situation or circumstance constitutes a Conflict of Interest;
 - (b) ONTC has the right to prescribe the manner in which the Engineering Consultant should resolve the Conflict of Interest; and
 - (c) ONTC may terminate the Agreement immediately upon Notice to the Engineering Consultant if the Engineering Consultant fails to disclose any actual or potential Conflict of Interest, if the Engineering Consultant fails to resolve its Conflict of Interest as directed by ONTC or if ONTC determines that the Conflict of Interest cannot be resolved.

FORCE MAJEURE, SUSPENSION AND TERMINATION

64. **Force Majeure.** Whenever and to the extent either party is unable to fulfil, or is delayed or restricted in fulfilling, any of its obligations under this Agreement by reason of a Force Majeure event, the time for fulfilling such obligation is extended for such reasonable time as may be required by that party to fulfil such obligation, provided that any such inability, delay or restriction does not relate to any extent to any act or omission by that party. No extension of time will be given unless the party seeking the extension submits to the other party within five (5) business days after the date on which the party ought reasonably to have been aware of the Force Majeure event a Notice requesting the extension of time, the cause of the Force Majeure event, the expected duration of the extension and mitigation efforts being undertaken by the party.

TERMINATION

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

- (a) by the mutual written agreement of the parties;
- (b) by ONTC upon written Notice to the Engineering Consultant, where the Engineering Consultant has failed to observe or perform any of its obligations under this Agreement, and such failure has not been remedied to the reasonable satisfaction of ONTC within fourteen (14) days of providing written Notice to the Engineering Consultant detailing the nature of such failure and requiring that such failure be remedied;
- (c) by ONTC, for any reason, upon not less than ten (10) days' prior written Notice; or,
- (d) by the Engineering Consultant upon written Notice to ONTC, where ONTC has failed to observe or perform any of its obligations under this Agreement, and such failure has not been remedied to the reasonable satisfaction of the Engineering Consultant within thirty (30) days of providing written Notice to ONTC detailing the nature of such failure and requiring that such failure be remedied.

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

- (a) the winding up or dissolution of the Engineering Consultant; or
- (b) subject to the provisions of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, the Engineering Consultant making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this Agreement.

67. **ONTC Remedies.** Without limiting the right of ONTC to pursue any remedy available to it in law, if this Agreement is terminated early for any reason other than those described in Section 65(a) or (d), then:

- (a) ONTC is excused from further performance under this Agreement;
- (b) any money payable by the Engineering Consultant to ONTC is immediately due and payable;
- (c) ONTC shall not be responsible for paying any amount over and above the chargeable amounts, including payment on a pro-rated basis if applicable, incurred up to the Effective Date of such termination, or a later date if work, already commenced by the Engineering Consultant, cannot reasonably be discontinued until such later date;
- (d) ONTC shall retain any rights, powers and remedies it has or may have against the Engineering Consultant; and
- (e) ONTC may enter an agreement with another person to provide the balance of the Services. The Engineering Consultant shall be liable for all costs incurred by ONTC in having the Services completed by another person(s).

CORRUPTION, FORCED LABOUR, SANCTIONS

68. The Engineering Consultant warrants that:

- (a) no bribe, gift or other inducement has been paid, promised or offered to any official or employee of ONTC, the Ministry of Transportation, the Government of Ontario or any other government official relating to ONTC entering into this Agreement with the Engineering Consultant;
 - (b) it will take reasonable steps to ensure that its officials and employees do not extort, accept or pay bribes or illicit payments, charge or accept fees that are not legally due or are in excess of those legally due, or unreasonably delay or obstruct the granting of permits, licences, or other such approvals in relation to the project. If the Engineering Consultant becomes aware of an actual or attempted bribe, extortion, delay or obstruction relating to this Agreement, the Engineering Consultant shall report the incident to ONTC immediately;
 - (c) it is unaware of any forced labour or child labour being used at any step of the production of goods produced, purchased or distributed by it in Canada or elsewhere or for the production of goods imported by the Engineering Consultant; and
 - (d) it has undertaken the appropriate due diligence to ensure its business and its supply chains do not use forced labour or child labour, including an assessment of its business and supply chains that may carry a risk of forced labour or child labour being used and the management of the risk. If applicable, the Engineering Consultant shall comply with the reporting requirements under the Fighting Against Forced Labour and Child Labour in Supply Chains Act, S.C. 2023 c.9.
69. In compliance with its international obligations or with United Nations obligations, Canada imposes restrictions on trade, financial transactions or other dealings with a foreign country or its nationals. These sanctions may be implemented by regulation under such acts as the United Nations Act, the Special Economic Measures Act (SEMA), or the Export and Import Permits Act. The text of any such regulations is published in the Canada Gazette, Part II. It is the only text which is authoritative. The Engineering Consultant shall comply with any such regulations that are in force on the Effective Date of the Agreement and will require such compliance by its first-tier Subcontractors. ONTC relies on such undertaking from the Engineering Consultant to enter into this Agreement, and any breach of such undertaking shall entitle ONTC to terminate this Agreement for default and to recover damages from the Engineering Consultant, including excess re-procurement costs.

COMMUNICATIONS

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

GENERAL

71. **Assignment.** Neither party may assign their respective rights and obligations under this Agreement without first obtaining the written consent of other party, provided, however, that either party may assign this Agreement to an affiliate or the successor of its business upon written notice to the other party. This Agreement shall ensure to the benefit of, and be binding upon, the parties and their respective successors (including any successor by reason of amalgamation, merger or statutory arrangement of any party) and permitted assigns.
72. **Notice.** Any Notice under this Agreement shall be given in writing and delivered personally or by email or prepaid courier addressed as follows:

To ONTC at:

Ontario Northland Transportation Commission
555 Oak Street
North Bay ON P1B 8L3
Attention: XXX
T:
E:

And to:

Legal Services & Corporate Governance
Legal@ontarionorthland.ca

To the Engineering Consultant at:

xxx
Attention: xxx
T: xxx
E: xxx

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

73. **No Waiver.** No waiver by a party of any breach by the other party of any of its covenants, agreements or obligations in this Agreement shall be a waiver of any subsequent breach or the breach of any other covenants, agreements or obligations, nor shall any forbearance by a party to seek a remedy for any breach by the other party be a waiver by the party of its rights and remedies with respect to such breach or any subsequent breach.
74. **Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties nor by any third party as creating the relationship of principal and agent, landlord and tenant, or of partnership or of joint venture between the parties.
75. **Governing Law.** This Agreement shall be governed by and constituted in accordance with the laws in force in the Province of Ontario, excluding any conflict of laws principles. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario for any legal proceedings arising out of this Agreement or the performance of the obligations hereunder.

76. **Severability.** Should any section or part or parts of any section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon ONTC and the Engineering Consultant as though such section or part or parts thereof had never been included in this Agreement.
77. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior understandings, discussions, negotiations, commitments, representations, warranties, and agreements, written or oral, express or implied between them with respect to the subject of this Agreement. No amendment, variation or change to this Agreement shall be binding unless the same shall be in writing and signed by the parties.
78. **Survival.** In addition to those provisions which are expressly stated to survive the termination or expiration of this Agreement, the provisions of this Agreement that are by their nature intended to survive termination or expiration of this Agreement shall continue in full force and effect subsequent to and notwithstanding termination or expiration until or unless they are satisfied.
79. **Electronic Signatures, Electronic Delivery, and Counterparts.** This Agreement may be executed with electronic signatures and delivered by electronic transmission and the Parties may rely upon all such signatures as though they were original signatures. This Agreement may be executed in counterpart and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

**ONTARIO NORTHLAND
TRANSPORTATION COMMISSION**

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

Date: _____

I have authority to bind the corporation.

XXX

Per: _____
Name:
Title:

Date: _____

I have authority to bind the corporation.

Schedule A

Deliverables/Scope of Work

Schedule B

Engineering Consultant's Submission