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**November 4, 2026**

**Addendum No. 01**

**File Reference Number: RFQ 2026 082**

**Title: Supply and Delivery of Railway Ties**

**RE: Clarifications/Questions**

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**QUESTIONS / CLARIFICATIONS:**

**Item 1:** Please see attached Draft Agreement to attach at Appendix A of the RFQ package.

This Addendum hereby forms part of the RFQ.

Regards,

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

**THIS PURCHASE AGREEMENT MADE EFFECTIVE** [date] (the **"Effective Date"**)

BETWEEN:

**ONTARIO NORTHLAND TRANSPORTATION COMMISSION** ("**ONTC**")

- and-

**XXX**

(the "**Supplier**")

**THE PARTIES AGREE AS FOLLOWS:**

**Definitions**

1. In this agreement, the following terms have the corresponding meanings:

"**Agreement Date**" means the date this agreement is signed by the last party to sign it, as determined by the dates indicated with the parties' signatures;

**"Change Order"** has the meaning set out in Section 12;

"**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;

"**Defect" or "Defective"** means non-conformity to the quantity, quality, specifications, and/or other requirements set out in the Contract Documents;

**"Delivery Date" or "Delivery Dates"** means the date(s) for the delivery of the Goods as set out in the Contract Documents;

"**Disclosing Party**" means the party disclosing Confidential Information;

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

"**Evaluated Import Charges**" means the Import Charges that ONTC evaluated as part of the Supplier's Proposal, as set out in Schedule C hereto (Evaluated Import Charges).

"**Force Majeure**" means an event or a cause beyond the control of a party, which may include war, interference by civil or military authorities, civil insurrection, local or national emergency, blockade, seizure, riot, sabotage, vandalism, terrorism, earthquake, flood, act of God, accident, fire, nuclear or other explosion, disease, epidemic, pandemic, quarantine restriction, strike, lockout or other labour disturbance, supply chain disruptions, governmental embargo, or changes to any acts, orders, legislation, regulations, directives, or priorities of any government or other public authority; provided such event is not caused by the affected party's negligence or failure to exercise reasonable diligence. A Force Majeure event or cause does not include an inability to

pay or a lack of financial resources unless it is due to a failure of the province to approve the appropriation from the Consolidated Revenue Fund for the Goods;

**"Goods"** means the supplies, materials or other things required to be furnished or delivered as specified in Schedule A and Schedule B;

"**Governmental Relief**" means remission, refund, rebate, drawback, credit, or other available relief from the applicable governmental authority with respect to Import Charges;

"**Import Charges**" means customs duties, tariffs, surtaxes, excise taxes, brokerage fees, customs clearance charges and similar governmental or import-related charges applicable to the importation of the Goods into Canada;

"**Unforeseen Tariffs**" means customs duties, tariffs, surtaxes, excise taxes, and similar governmental or import-related charges applicable to the importation of the Goods into Canada that arise and become applicable to the Goods after the Effective Date, were not known or reasonably foreseeable on or before the Effective Date, and which arise under law, regulation, or other governmental measure that was not announced, enacted, adopted, issued or otherwise created on or before the Effective Date;

"**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;

**"Intellectual Property Rights"** means domestic and foreign intellectual property rights including: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications, (ii) copyrights, copyright registrations and applications for copyright registration, (iii) mask works, mask work registrations and applications for mask work registrations, (iv) designs, design registrations, design registration applications and integrated circuit topographies, (v) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing, (vi) trade secrets, proprietary information, know-how, technology, business ideas, drawings, and specifications relating to the business and (vii)the right to commence legal proceedings with respect to the past or present infringement of the foregoing, including the right to recover all damages and profits, as provided for herein;

"**Loss**" includes loss, liability, damage, cost, expense, legal cost and disbursement;

"**Notice**" includes notification or communication required or permitted to be given by one party to the other party under this agreement;

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

"**Receiving Party**" means the party receiving Confidential Information, and includes all the Receiving Party's Parties;

"**Subcontractor**" means a person who contracts with the Supplier or another Subcontractor for the performance of any part of the Supplier's obligations under the agreement; and

"**Supplier Parties**" includes the Supplier and its officers, directors, employees, contractors and agents and those for whom the Supplier is in law responsible;

## SPECIFICS OF THIS PARTICULAR AGREEMENT

### Description of the Goods

2. The Goods to be supplied under this agreement in 2027 are described in Schedule A. ONTC may, at its sole discretion, extend this agreement (and request the Supplier to provide Goods) for delivery in the years 2028, 2029, 2030 and 2031 by providing notice to the Supplier on or before September 30 of the previous calendar year. The extensions, if any, will be subject to delivery dates, quantities and price for each year being agreed upon by the parties and a Change Order executed.

### Contract Price

3. ONTC shall pay the Supplier for the Goods to be supplied under this agreement in 2027, the amount of XX (the **"Contract Price"**), which consists of the Supplier's Total Bid Price plus Total Evaluated Import Charges. Total Evaluated Import Charges are set out in Schedule C hereto. The Contract Price for Goods for the optional extension terms shall be negotiated between the parties.

4. The Contract Price will include Evaluated Import Charges only:

    a. to the extent the Supplier: (i) actually incurs the Evaluated Import Charge(s) upon importation of the Goods, (ii) provides ONTC with official customs documentation and proof of payment for each Evaluated Import Charge incurred, and (iii) invoices ONTC for Evaluated Import Charges at actual documented cost without markup; and

    b. when the Supplier obtains ONTC's written authorization, prior to shipment of the Goods, in relation to the Evaluated Import Charge(s).

    The Contract Price shall be reduced by the amount of any Evaluated Import Charge(s) where the Supplier fails to meet these criteria.

### Duration of this Agreement

5. This agreement becomes effective on the Effective Date, and, unless terminated earlier in accordance with this agreement, lasts until final completion of the Supplier's obligations under this agreement.

### Contract Documents

6. The contract documents consist of the following:

    (a) this Agreement;

(b) any Change Orders;

(c) Deliverables/Specifications for Goods (Schedule A);

(d) Supplier's Proposal (Schedule B);

(e) Evaluated Import Charges (Schedule C); and,

(f) any other documents incorporated by reference in any of the foregoing.

(the **"Contract Documents"**).

**Precedence**

7. Subject to any contrary intention elsewhere in this agreement, in case of any inconsistency or conflict between the parts of the Contract Documents, such parts shall prevail in the following order, but only to the extent necessary to resolve the conflict or inconsistency:

(a) Change Orders;

(b) the body of this agreement;

(c) Schedule A (Deliverables/Specifications);

(d) Schedule B (Supplier's Proposal); and,

(e) any other documents incorporated by reference in any of the foregoing.

## PROVISION OF THE GOODS BY THE SUPPLIER

**Goods to be Purchased**

8. The Supplier shall provide the following Goods:

Rail ties and related materials in accordance with the specifications in Schedule A.

**Prior to Provision of the Goods**

9. Immediately after the Effective Date, and prior to production of any of the Goods, the Supplier shall provide to ONTC any proofs of compliance required under this agreement or in the procurement documents.

**Standard of Care**

10. The Supplier shall:

(a) provide the Goods in accordance with all Environmental Laws and other applicable laws and the Contract Documents;

(b) in performing its obligations under the Contract Documents, exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent Supplier providing Goods of a similar nature to the Goods; and,

(c) ensure any equipment used by the Supplier or by its Subcontractors at ONTC's premises will be in safe working condition, will comply with all laws applicable to such equipment and will be operated by suitably qualified and competent Supplier Parties,

(collectively, the "**Standard of Care**").

11. The Supplier acknowledges and agrees that throughout the performance of its obligations under the Contract Documents, the performance of the Supplier's obligations, duties and responsibilities shall be judged against the Standard of Care. The Supplier shall exercise such Standard of Care in respect of any products, personnel or procedures which it may provide to ONTC.

## Changes

12. Changes of any kind to the design or specifications for the Goods shall only be made by the Supplier, upon receipt of a written change order signed by an authorised member of each Party (each, a **"Change Order"**). The Change Order shall provide details of the change in design or specifications and specify any agreed adjustment to the Contract Price in respect of the change. A Change Order shall represent the full amount payable for all costs associated with the change or changes for which it was issued.

13. ONTC shall have no liability whatsoever for any claim for payment for additional costs incurred by the Supplier which have not been authorised in advance by ONTC by way of a Change Order.

## Defective Goods

14. The Supplier shall promptly correct Defects in the Goods at its expense, whether or not the Defect is the result of poor design, poor workmanship, use of Defective products or damage through carelessness or other act or omission of the Supplier.

15. All or part of any payment under an invoice or any holdback may be withheld by ONTC or set-off against the payments owing to the Supplier until the Supplier has remedied any Defects at the Supplier's sole expense.

## Delivery and Acceptance

16. The Delivery Dates for the Goods and the quantities of the deliveries shall be as set out in Schedule A. The actual Delivery Dates shall be coordinated with the ONTC Tracks Program Manager. The Supplier shall be responsible for delivery of the Goods to the location specified by ONTC on the Delivery Dates. The Delivery Dates may only be changed by the written consent of ONTC.

17. The Supplier shall pay all costs incurred in connection with the shipping and delivery of the Goods including Evaluated Import Charges. The risk of loss or damage to the Goods during delivery and prior to the delivery to ONTC's location shall be with the Supplier.

18. ONTC shall reimburse the Supplier for, or pay directly as ONTC may elect, Unforeseen Tariffs. The parties shall negotiate in good faith and execute any Change Order that may be necessary in the event of Unforeseen Tariffs.

19. Prior to importation of the Goods into Canada, the Supplier shall disclose to ONTC the identity of the importer of record and whether the importer of record is a Canadian person or entity.

20. The Supplier shall maintain copies of all official customs accounting documentation, including proofs of payments of all Import Charges.

21. ONTC may, in its sole discretion and on a shipment-by-shipment basis, elect to act as the importer of record on its own or through an agent. ONTC will communicate its election through the applicable purchase order or written shipping instructions.

22. Where ONTC elects to act as importer of record:

    a. ONTC will be responsible for arranging customs clearance and paying the applicable Import Charges, and the Supplier shall not include these Import Charges in its invoice(s) to ONTC and will not be reimbursed by ONTC for these Import Charges.

    b. the Supplier shall comply with ONTC's shipping and customs instructions;

    c. the Supplier shall provide all information and documentation reasonably required by ONTC or its customs broker to import the Goods and pursue any applicable Governmental Relief; and

    d. The parties shall work together in good faith to address, in a manner that does not materially alter the Contract Price or the costs to be borne by either party, any necessary consequential contractual or operational changes, including any changes to Incoterms, shipping, and insurance.

23. Where ONTC does not elect to act as importer of record:

    a. the Supplier shall be responsible for arranging importation and customs clearance;

    b. the Supplier's invoices must separately identify each Import Charge and Unforeseen Tariff;

    c. the Supplier shall provide to ONTC official customs accounting documentation and proof of payment with respect to each Import Charge and Unforeseen Tariff;

    d. any Import Charges and/or Unforeseen Tariffs payable or reimbursable by ONTC must be authorized by ONTC in writing before shipment. Authorized Import Charges, including Evaluated Import Charges, and Unforeseen Tariffs shall be invoiced by the Supplier at actual documented cost without markup.

    e. ONTC shall not be responsible to pay or reimburse the Supplier for any Unforeseen Tariffs or any Import Charges, including any Evaluated Import Charges, that the Supplier does not actually incur, whether due to a change in applicable tariff rate(s)

or otherwise, or for which the Supplier fails to provide customs accounting documentation and proof of payment to ONTC.

24. ONTC shall do a preliminary inspection and receive the Goods upon delivery to the ONTC location. The Supplier acknowledges that:

    (a) ONTC will only be able to visually inspect the Goods upon delivery and receipt due to bundling of the ties;

    (b) any Defects in the Goods may not be discoverable until installation work has commenced;

    (c) ONTC shall not be deemed by receiving the Goods to have accepted Defects, if any, in the Goods nor to have waived its rights for remedies for Defective Goods; and,

    (d) the remedies of ONTC relating to Defective Goods described in sections 25 and 26 or under applicable laws will be available to ONTC until the Goods are installed.

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

    (a) keep the Goods and adjust the Contract Price to reflect the diminished value of the Goods, as determined by ONTC;

    (b) reject the Goods and return them (or require the Supplier to retrieve or undo them) at the Supplier's expense and either require the Supplier to replace them at the Supplier's cost or terminate that quantity of the Goods and adjust the Contract Price accordingly. If ONTC rejects the Goods, it shall not be responsible for any re-stocking charge.

26. If the Goods are rejected by ONTC, the Supplier shall be responsible for all costs incurred by ONTC as a result of any delay in ONTC completing the work related to the installation of the Goods as if the Goods had not been delivered on the Delivery Date as described in section 15.

27. While on ONTC property for the delivery of the Goods, the Supplier shall comply with all applicable laws and public health restrictions and with applicable ONTC policies, including its Fit for Duty Policy.

**Governmental Relief**

28. Where the Supplier or its agent is the importer of record or where the Supplier incurs Import Charges in relation to delivery of the Goods:

    a. The Supplier may, at its own expense, apply for Governmental Relief. The Supplier shall, at its own expense, apply for and use commercially reasonable efforts to obtain Governmental Relief if ONTC provides the Supplier with written notice directing the Supplier to apply for Governmental Relief.

    b. ONTC may elect, at its sole discretion, to apply for Governmental Relief on the Supplier's behalf or to assist the Supplier in its application(s) for Governmental Relief. The Supplier shall assist ONTC, including by providing information and/or documentation that ONTC requests that may be relevant to the application(s).

c. The Supplier shall provide written notice to ONTC prior to making any application for Governmental Relief and shall maintain the confidentiality of ONTC confidential information in accordance with this agreement. The Supplier shall promptly notify ONTC of the result of any application for Governmental Relief.

d. Governmental Relief shall be for the benefit of ONTC. The Supplier shall promptly pay to ONTC any amounts received in relation to such Governmental Relief.

29. Where ONTC or its agent is the importer of record: ONTC may apply for Governmental Relief. In such circumstances, ONTC shall retain any Governmental Relief. The Supplier shall assist in supporting ONTC's application(s), including by providing information and/or documentation that ONTC requests that may be relevant to ONTC's application.

**Title and Risk**

30. Subject to any contrary intention in the Contract Documents, title to all Goods and all risk of damage or loss thereof shall pass to ONTC on the date the Goods are delivered to ONTC's location and received by ONTC.

**Time of the Essence**

31. The parties agree that time is of the essence in this agreement and the Goods must be delivered to ONTC on the Delivery Dates and in the quantities agreed to by the parties.

32. The Supplier acknowledges that ONTC will suffer damages if the Goods are not delivered to ONTC on the Delivery Date or if the Goods have Defects that delay the installation of the Goods. The Supplier shall be responsible for all damages suffered by ONTC as a result of failure to deliver the specified quantity of Goods on the Delivery Date or a delay in the installation of the Goods due to Defects. Notwithstanding any other provision of the Contract Documents, these damages shall include, but not be limited to, the cost to ONTC, including the cost of internal resources, to obtain alternate Goods, any losses to ONTC due to a delay in obtaining alternate Goods, additional labour costs, and additional costs requested by ONTC contractors installing the Goods.

**Intellectual Property**

33. The Supplier is responsible for obtaining all approvals and licenses with regarding to any Intellectual Property associated with the Goods.

34. The Supplier shall be liable for and fully indemnify and hold harmless ONTC against any liability, whether direct or indirect, arising out of a claim by any third party against ONTC alleging that the Goods and/or its use by ONTC infringes and/or induces infringement of any Intellectual Property Rights. In the event that an injunction is obtained against ONTC's use of the Goods because of infringement of a third party's Intellectual Property Rights, in addition to any other remedy available to ONTC, the Supplier shall replace the Goods to the satisfaction of ONTC so that they become non-infringing.

**Warranty**

35. The Supplier warrants that the Goods will: (i) be of good quality and workmanship; (ii) conform to the specifications and/or standards in the Contract Documents; (iii) comply with all Environmental Laws and applicable local, provincial and federal laws and regulations; (iv) be free from Defects in design, materials and workmanship; and (v) be fit for the intended purpose.

36. ONTC shall benefit from all legal and manufacturer's warranties available in connection with the Goods and the Supplier shall assign all such warranties to ONTC on the same terms in which these warranties have been provided to the Supplier, to the extent such warranties permit assignment. The Supplier shall cooperate with ONTC in the enforcement of the assignment and the warranties against the manufacturers.

## PAYMENT BY ONTC

### Amounts Chargeable in Respect of the Goods

37. The Supplier may charge ONTC, for the provision of the Goods amounts not greater than the Contract Price and any Change Orders. The Supplier shall submit an invoice to its ONTC Contact Person and to pay.inv@ontarionorthland.ca.

### Payment

38. ONTC shall pay the Supplier for the Goods within 30 days of receipt of an invoice and required backup materials from the Supplier, subject to any dispute or right of set off by ONTC. Notwithstanding the foregoing, the Supplier shall not invoice ONTC earlier than April 1st in any calendar year, even if Goods were delivered prior to that.

39. Whenever any amount is recoverable from or payable by the Supplier to ONTC pursuant to the Contract Documents, ONTC may deduct this amount from any amount due to the Supplier.

### Final Invoice

40. As of the date of submission of the final invoice, the Supplier expressly waives and releases ONTC from any further claims against ONTC, related to the Contract Documents, except those claims stated in the final invoice and those claims made in writing prior to the date of submission of the Supplier's final invoice and still unsettled.

## EXTENSION AND EARLY TERMINATION OF THIS AGREEMENT

### Force Majeure

41. Neither party shall be liable to the other for any delay in or failure to perform its obligation under this agreement (other than non-payment of money by ONTC to the Supplier) if any such delay or failure is due to Force Majeure. If a party becomes aware of an event of Force Majeure affecting its ability to perform its obligations under this Agreement, it shall give the other party oral notice within two business days of the event of Force Majeure, and, in addition, Notice, together with a proposed plan of corrective action to resolve or minimize the effect of the event of Force Majeure, within five (5) Working Days of the event of Force Majeure.

42. If there is an event of Force Majeure, the party claiming such event shall:

    (a) complete the performance of its obligations as soon as possible after the event of Force Majeure is removed;

    (b) make all reasonable efforts to mitigate the effect of the event of Force Majeure on the other party; and

    (c) not treat other parties with whom it contracts more favourably where its obligations to such other parties are affected by the same event of Force Majeure.

43. For each full day of Force Majeure, the Delivery Date shall be extended by a full day.

44. If an event of Force Majeure continues for a period in excess of 60 continuous days, either party may terminate this agreement effective upon Notice to the other party and ONTC shall pay the Supplier for the prorated value of the Goods supplied to the date of termination. This amount shall be the sole remedy of the Supplier for the termination of the agreement pursuant to this section.

**Early Termination**

45. ONTC may, for cause, terminate this agreement if the Supplier defaults in the performance of any of the terms and conditions of this agreement or with any proper order or request of ONTC, upon providing written notice to the Supplier of the particulars of the default. If the Supplier fails to remedy the default within seven days from the date of delivery of the Notice, ONTC shall have the right, at its sole option, to terminate this agreement forthwith by providing Notice to the Supplier.

46. ONTC may, in its sole discretion, terminate this agreement upon at least seven day's Notice, if Unforeseen Tariffs arise that have caused or will cause a material change to ONTC's costs in relation to this agreement.

47. The Supplier may terminate this agreement upon at least seven days' Notice if ONTC fails to make payment that is due and payable within the payment period in accordance with the agreement and ONTC failing to remedy such breach within seven days of receiving Notice of the breach.

48. The parties may, by agreement, terminate this agreement at any time.

49. This agreement will terminate immediately upon:

    (a) The dissolution of the Supplier; or

    (b) Subject to the provisions of the Bankruptcy and Insolvency Act, RSC 1985, c. B-3, the Supplier making an assignment for the benefit of its creditors, becoming bankrupt or insolvent, undergoing reorganization, making a proposal to its creditors, or otherwise becoming financially unable to perform its obligations under this agreement.

50. If this agreement is terminated early in accordance with sections 45, 46 or 49, then:

(a) ONTC is excused from further performance under this agreement;

(b) Any money payable by the Supplier 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; and,

(d) ONTC shall retain any rights, powers and remedies it has or may have against the Supplier.

## CONFIDENTIAL INFORMATION

### General Confidentiality Requirements

51. The Receiving Party shall ensure that all of the Receiving Party's Parties comply with all the provisions of this agreement relating to Confidential Information and the Receiving Party shall be responsible for any failure by any Receiving Party's Parties to do so.

52. The Receiving Party shall use Confidential Information only for the purposes of this agreement.

53. The Receiving Party shall not copy or transcribe into another form, any Confidential Information received from the Disclosing Party except as reasonably necessary.

54. Upon the termination of this agreement, or earlier upon the request of the Disclosing Party, the Receiving Party shall promptly destroy or return (as directed by the Disclosing Party) all copies of the Confidential Information disclosed to the Receiving Party.

### Keeping Confidential Information Confidential

55. Except as provided in this agreement, the Receiving Party shall keep confidential all Confidential Information disclosed to it by the Disclosing Party.

56. The Receiving Party shall protect the Confidential Information disclosed to it by the Disclosing Party, in the same manner and to the same extent that it protects its own Confidential Information.

57. The provisions of this agreement relating to Confidential Information will remain in effect for five years after the termination of this agreement.

### Disclosing Confidential Information

58. The Receiving Party may disclose Confidential Information if:

(a) the Disclosing Party approves in writing;

(b) the Receiving Party is required by law to disclose it; or,

(c) the Confidential Information is generally and publicly available.

59. If the Receiving Party is required by law to disclose Confidential Information, it shall promptly notify the Disclosing Party so that the Disclosing Party may intervene to prevent the disclosure.

60. The Supplier specifically acknowledges that ONTC is subject to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, and that ONTC may be compelled by law to disclose certain Confidential Information.

**Breach of Confidentiality**

61. If either party breaches any provision of this agreement relating to Confidential Information, it shall immediately give Notice of such breach to the other party and take all necessary steps to limit the extent and impact of the breach.

62. If a party were to breach the provisions of this agreement relating to Confidential Information, the harm that would be suffered by the other party would not be compensable by monetary damages alone. Therefore, either party may, in addition to any other remedies, seek an injunction against any breach or threatened breach by the other party of any provision relating to Confidential Information.

## INDEMNITY AND LIMITATION OF LIABILITY

63. **Representations.** Except for the representations and warranties and conditions expressly set out in this Agreement, ONTC hereby excludes all representations, warranties and conditions of any kind, express or implied, including any implied warranty of merchantability or fitness for a particular purpose.

64. **General Indemnity**. The Supplier shall indemnify and hold harmless ONTC and ONTC Parties from and against all Losses which may arise by reason of the exercise of the responsibilities and obligations contained herein by the Supplier or as a result of any breach of the terms of this Agreement by the Supplier or by any act or omission of the Supplier or Supplier Parties or those for whom the Supplier is at law responsible, including all legal costs and expenses reasonably incurred by ONTC in connection with the defence or settlement of any such Loss, unless such Loss is caused by the negligent act or omission of ONTC or those for whom it is in law responsible. The Supplier shall, at ONTC's election, either assume the defence of every proceeding brought in respect of such Loss, or cooperate with ONTC in the defence, including providing ONTC with prompt Notice of any possible Loss and providing ONTC with all information and material relevant to the possible Loss. For the purpose of enforcement of this indemnity, ONTC is acting as agent and trustee for the ONTC Parties.

65. **Specific Indemnities.** The Supplier shall indemnify ONTC and ONTC Parties and save them harmless from and against all Losses incurred by ONTC arising from:

    (a) any claim by any third party against ONTC alleging that the Goods and their use by ONTC infringes any Intellectual Property Rights;

    (b) any claim against ONTC arising from the failure of the Supplier to protect the confidentiality of Confidential Information; and,

(c) safety infractions committed by the Supplier under health and safety legislation, regulations, guidelines or orders, including the *Occupational Health and Safety Act.*

66. **Bodily Injury and Property Damage.** The Supplier shall make full and complete compensation for any bodily injury or death to any person while delivering the Goods and for any damage caused to ONTC's physical property by an act or omission of the Supplier or a Supplier Party.

67. **Supplier Losses.** The Supplier shall be liable for any claims arising from any personal injuries to or death of any of the Supplier Parties or from any loss of or damage to any property belonging to the Supplier or Supplier Parties during the delivery of the Goods unless caused by the negligent act or omission of ONTC or ONTC Parties.

68. **Waiver.** The Supplier 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 Supplier or Supplier Parties and for any loss or damage of the Supplier unless caused by the negligent act or omission of ONTC or ONTC Parties.

69. **Limitation of Liability.** Notwithstanding any other provision of this Agreement,

    (a) neither party shall be responsible for indirect, consequential, special, incidental or contingent damages of any nature whatsoever, including loss or revenue or profit. This limitation shall apply regardless of the form of action, damage, claim, liability, cost, expense or loss, whether in contract (including fundamental breach), statute, tort (including negligence), or otherwise, and regardless of whether a party has been advised of the possibility of such damages; and,

    (b) any express or implied reference to ONTC providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of ONTC, whether at the time of execution of this Agreement or at any time during the Term or Renewal Term, shall be void and of no legal effect in accordance with s.28 of the *Financial Administration Act*, R.S.O. 1990, c. F.12.

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

## GENERAL

71. **Notices**: A party giving Notice shall give it in writing and shall send it by personal delivery, email, or prepaid courier to the other party's contact person at an address of the other party provided for in this agreement.

72. The initial contact person and contact address for the parties are:

To ONTC at:
Ontario Northland Transportation Commission
Attention: Merick Letourneau

555 Oak Street East
North Bay, ON P1B 8L3
T: 705-472-4500 ext. 128
E: Merick.Letourneau@ontarionorthland.ca

And to:
Legal Services & Corporate Governance
Legal@ontarionorthland.ca

To the Supplier at :

Attention:
T:
E:

73. A Notice sent by:

    (a) personal delivery is deemed to be delivered on the date it is personally delivered;

    (b) email is deemed to be delivered upon the sender receiving from the recipient a written acknowledgment of receipt; and,

    (c) prepaid courier is deemed to be delivered two days after the consignment to the courier.

74. **Outside Communications:** Neither party will communicate with the media or anyone else about the Goods except with the prior written approval of the other party, except as such communication may be required by law.

75. **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.

76. **Relationship:** The Supplier is an independent contractor of ONTC. The Supplier shall not, except as ONTC may specifically authorize in writing, enter into any contracts or commitments in the name of or on behalf of ONTC, or bind ONTC in any respect whatsoever. The Supplier is not a partner, joint venturer, agent or employee of ONTC.

77. **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.

78. **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 Supplier as though such section or part or parts thereof had never been included in this Agreement.

79. **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.

80. **Entire Agreement:** The Contract Documents constitute the entire contract between the parties with respect to its subject matter and supersedes all prior or contemporaneous commitments, representations, warranties, arrangements, understandings agreements, and negotiations, whether written or oral, or collateral or other, with respect to its subject matter, existing between the parties at the Agreement Date.

81. **Counterparts and Electronic Delivery:** This Agreement may be executed with electronic signatures and delivered by electronic transmission of a .pdf of the executed Agreement and the parties may rely upon the .pdf document as though the .pdf document was an original hard copy of the Agreement. This Agreement may be executed in any number of counterparts and all such counterparts shall, for all purposes, constitute one agreement binding on the parties.

82. **Language:** The parties agree that this Agreement and all agreements and documents entered into in connection with or pursuant to this Agreement shall be drafted in English only. *Les parties confirment qu'elles ont convenu que la présente convention ainsi que tous les autres documents ou contrats s'y rattachant soient rédigés en anglais seulement.*

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, The Parties Have Executed This Agreement.

**ONTARIO NORTHLAND**
**TRANSPORTATION COMMISSION**

Per _____
Name:

Title:

Date_____

*I have authority to bind the corporation.*

**XXX**

Per _____
Name:
Title:

Date_____

*I/We have authority to bind the corporation.*

## SCHEDULE A

## DELIVERABLES/SPECIFICATIONS

## SCHEDULE B

## SUPPLIER'S PROPOSAL

**SCHEDULE “C”**

**EVALUATED IMPORT CHARGES**