



Request for Proposals

for

SATELLITE BROADBAND SYSTEM PROGRAM

RFP No. 23-1049

Date Issued: January 3, 2024

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- Schedule 2 Proponent Consultation Process
- Schedule 3 Proposal Submission Guidelines and Evaluation Table
 - Part A – Proponent Team Member Submission Requirements
 - Part B – Technical Submission Requirements
 - Part C – Financial Submission Requirements
- Schedule 4 Form of Project Agreement
- Schedule 5 Form of Guarantee
- Schedule 6 Form of Letter of Credit

REQUEST FOR PROPOSALS**SECTION 1. INTRODUCTION****1.1 General**

- (1) Ontario Infrastructure and Lands Corporation (also referred to as “**Infrastructure Ontario**” or “**IO**”) is a non-share capital corporation, reporting to the Minister of Infrastructure (“**MOI**”) and is responsible for delivering public infrastructure improvements as well as providing lending, real estate and asset management, project delivery, and other public sector initiatives for the Province of Ontario. Infrastructure Ontario also provides financing for municipalities, universities and other public bodies in the Province of Ontario by way of issuing bonds, debentures and other evidence of indebtedness to the public and lending the proceeds thereof to such entities. Infrastructure Ontario is governed by the *Ontario Infrastructure and Lands Corporation Act*, 2011.
- (2) This Request for Proposals (“**RFP**”) is issued by Infrastructure Ontario in conjunction with *His Majesty the King in right of Ontario*, as represented by MOI (referred to as the “**Client**”). Infrastructure Ontario and the Client are collectively referred to as the “**Sponsors**” for the purposes of this RFP.
- (3) In this RFP, Prequalified Parties that submit documents in response to this RFP are referred to as “**Proponents**” and their submissions, as may be revised by RFP Section 5.3, if applicable, are referred to as “**Proposals**”. The entity selected as the “preferred proponent” in respect of the Program pursuant to RFP Section 6.5.7(1) is referred to as the “**Preferred Proponent**” for the Program. The entity selected as the “alternate proponent” in respect of the Program pursuant to RFP Section 6.5.7(1) is referred to as the “**Alternate Proponent**” for the Program. Upon execution of the Project Agreement, the Preferred Proponent shall become the “**Successful Proponent**” for the Program. For the purposes of convenience, in this RFP the expression “**Proponents**” also includes Prequalified Parties prior to the submission of their Proposals.
- (4) The procurement process to select a Successful Proponent shall commence with the issuance of this RFP and shall terminate on Commercial Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable), whichever is first (the “**RFP Process**”).
- (5) Infrastructure Ontario will manage the RFP Process on behalf of the Sponsors and Infrastructure Ontario shall be the single point of contact for Proponents on behalf of the Sponsors. During the RFP Process, Proponents shall contact Infrastructure Ontario only through the Contact Person as set out in RFP Section 3.2.1.
- (6) A brief description of the Program that is the subject of this RFP is set out in the RFP Data Sheet. A detailed description of the Program is contained in the documentation and information available on MERX and One Window. The Program forms part of Ontario Connects: Ontario’s High Speed Internet Plan. A

brief description of Ontario Connects: Ontario's High Speed Internet Plan is set out in the RFP Data Sheet.

- (7) While Infrastructure Ontario will manage the RFP Process in respect of the Program, the Successful Proponent, subject to the requirements and conditions of the RFP Documents, will be entering into the Project Agreement with the party or parties named as the signing party or parties in the RFP Data Sheet (the "**Signing Parties**"). Unless listed as Signing Parties to the Project Agreement in the RFP Data Sheet, neither Infrastructure Ontario, nor the Government of Ontario will be parties to the Project Agreement.

1.2 Prequalified Parties and Proponent Representatives

- (1) Subject to RFP Section 3.5, only those parties that were prequalified through the Program Request for Qualifications ("**RFQ**") process that preceded this RFP (the "**RFQ Process**") are eligible to participate in the RFP Process. The prequalified parties are listed in the RFP Data Sheet ("**Prequalified Parties**"). The prequalification forms and documents submitted by each of the Prequalified Parties in the RFQ Process that preceded and was with respect to the RFP Process are referred to as a Prequalified Party's "**Prequalification Submission**".
- (2) All correspondence from the Sponsors to a Proponent will be sent to the Person identified in the Proponent's Prequalification Submission as the Person who will receive information and notices on behalf of the Proponent (the "**Proponent Representative**"). Each Proponent is solely responsible for ensuring that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives' information by notifying the Contact Person, in writing.

1.3 Overview of the Stages of Program Procurement and Implementation

- (1) The procurement process will follow the Ontario Public Service (OPS) Procurement Directive and Infrastructure Ontario's procurement policy and will proceed by way of an open qualification process followed by an invitational request for proposals issued to Prequalified Parties.
- (2) The Sponsors will carry out the procurement and implementation of the Program in accordance with the following stages and phases:
 - (a) Stage 1 – Request for Qualifications Stage

The request for qualifications stage ("**RFQ Stage**") preceded the RFP Process and identified the Prequalified Parties.

The RFQ Stage is a standalone independent stage and is complete once the Prequalified Parties are identified by the Sponsors and have received notification by the Sponsors that they are prequalified for the RFP Process.
 - (b) Stage 2 – RFP Process

The RFP Process is the competitive procurement process described in detail in this RFP. The RFP Process consists of three phases: (1) a proposal submission phase, (2) a technical and financial evaluation phase and (3) a Commercial Close phase. The RFP Process begins with the issuance of this RFP to Prequalified Parties and ends upon Project Agreement execution with the Successful Proponent.

(i) Phase 1 – Proposal Submission

Proponents will make a Proposal Submission, in accordance with the requirements set out in Schedules 3 to this RFP.

(ii) Phase 2 – Technical and Financial Evaluation

The Sponsors will conduct due diligence on and evaluate each Proponent's Proposal in accordance with RFP Section 6.

(iii) Phase 3 – Commercial Close

The Successful Proponent will enter into the Project Agreement with the Signing Parties.

(c) Stage 3 – Implementation of the Project Agreement

As further described in the RFP Data Sheet, once the Signing Parties and the Successful Proponent have executed the Project Agreement, the terms and conditions of the Project Agreement shall determine how the Program is to proceed.

1.4 Fairness Advisor/Monitor

- (1) The Sponsors have retained the Fairness Advisor/Monitor named in the RFP Data Sheet to monitor the RFP Process.

SECTION 2. THE RFP DOCUMENTS AND MERX

2.1 RFP Documents

- (1) The RFP documents (the "**RFP Documents**") are:
- (a) this RFP;
 - (b) Schedule 1 – RFP Data Sheet;
 - (c) Schedule 2 – Proponent Consultation Process;
 - (d) Schedule 3 – Proposal Submission Guidelines and Evaluation Table, consisting of:

- (i) Part A – Proponent Team Member Submission Requirements;
 - (ii) Part B – Technical Submission Requirements; and
 - (iii) Part C – Financial Submission Requirements;
- (e) Schedule 4 – Form of Project Agreement (including all related Schedules appendices and attachments) as listed in the RFP Data Sheet;
 - (f) Schedule 5 – Form of Guarantee;
 - (g) Schedule 6 – Form of Letter of Credit; and
 - (h) Addenda to the RFP Documents, if any.
- (2) Subject to RFP Section 2.2(1), the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, Background Information documents are not RFP Documents.

2.2 Conflicts or Inconsistencies in Documents

- (1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising the RFP Documents, the following shall apply:
- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters during the RFP Process, this RFP shall prevail over the Schedules to this RFP during the RFP Process;
 - (b) in respect of all matters of interpretation of the Program and the Project Agreement during the RFP Process, the Project Agreement shall prevail over this RFP and all other Schedules to this RFP; and
 - (c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Project Agreement, the provisions of the Project Agreement dealing with conflicts or inconsistencies shall govern.
- (2) Despite RFP Section 2.2(1), if a Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of requests for information (“**RFIs**”).
- (3) If there is a conflict or inconsistency between:
- (a) the Sponsors’ electronic version of an RFP Document as available through MERX; and

- (b) any other version of the same RFP Document (whether in electronic or paper copy format),

the Sponsors' electronic version as available through MERX shall govern.

- (4) If there is any conflict or inconsistency between documents, including the RFP Documents, as available through MERX and documents that are downloaded by a Proponent, the documents as available through MERX shall govern.
- (5) If there is any conflict or inconsistency between two versions of the same RFP Document as available through MERX, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP Section 2.2(5), the date of each RFP Document shall be determined by the date and time when that document was uploaded to MERX by Infrastructure Ontario.

2.3 Distribution of Documents to Proponents

- (1) Except as provided in RFP Section 2.3(2), Infrastructure Ontario will circulate all RFP Documents, including Addenda, by uploading them to MERX and notifying the Proponent Representatives by e-mail that the RFP Documents or Addenda, as applicable, have been added to MERX. Notification to Proponents by Infrastructure Ontario that documents have been added to MERX is a courtesy only and Proponents are solely responsible for ensuring that they have reviewed all documents available on MERX in accordance with RFP Section 2.4(4) and, in particular, have reviewed all documents as available through MERX immediately prior to submitting Proposals.
- (2) The Sponsors may circulate some RFP Documents in paper copy format. If the Sponsors circulate any RFP Documents in paper copy format, Proponents will be notified of a circulation in paper copy format by way of a notice through MERX.

2.4 MERX and One Window

- (1) The Sponsors are using the MERX electronic tendering service (telephone number: 1-800-964-6379; web site: www.merx.com, e-mail: merx@merx.com) ("**MERX**") for:
 - (a) the distribution of RFP Documents and Addenda (including "black-lined" RFP Documents revised by Addenda);
 - (b) the provision of various types of other background information for the Proponents' review (the "**Background Information**"); and
 - (c) the receipt of RFIs from Proponents and the posting of responses to such RFIs.
- (2) In addition to MERX, the Sponsors have established One Window, a geographic information system at <https://www.onewindow.ca> ("**One Window**"), to provide

additional Background Information. Any documents and information available on One Window constitute Background Information and do not form part of the RFP Documents.

- (3) MERX and One Window will be accessible as of the date of this RFP. The Sponsors may add, delete or amend documents and information available through MERX and/or One Window at any time.
- (4) Each Proponent is solely responsible for ensuring that it:
 - (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to MERX and One Window and receipt of a password to MERX and a password to One Window;
 - (b) contacts MERX if it has difficulty accessing MERX;
 - (c) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from MERX and One Window, as applicable; and
 - (d) checks MERX and One Window frequently for the addition, deletion or amendment of the RFP Documents, Background Information and the posting of responses to RFIs, and, at all times during the RFP Process keeps itself informed of and takes into account the most current RFP Documents, Background Information and responses to such RFIs.

2.5 Background Information

- (1) The Background Information uploaded on One Window includes the following:

Background Information Name	Description
Map of the 5 Proposed Latitudinal Bands	Access to a geographic information system based map showing the Latitudinal Bands as follows: <ul style="list-style-type: none"> (a) 56°N-57°N: most northern rural regions; (b) 50°N-56°N: second most northern rural regions; (c) 47°N-50°N: third most northern rural regions; (d) 45°N-47°N: second most densely populated region; and (e) 41°N-45°N: most densely populated region.
Estimated Eligible Premises for the Program by Latitudinal Bands	Additional data in the geographic information system based map showing the estimated

	Eligible Premises counts for the Latitudinal Bands.
Map Viewer – Open Data	Additional data layers providing information regarding Ontario including: (a) lower and upper municipalities; (b) conservation authorities; and (c) local electrical distributors.
List of Program Indigenous Communities	An indicative list of Program Indigenous Communities.

The Background Information described above may reflect updates to information provided during the RFQ Process.

2.6 Proponent Investigations

- (1) Each Proponent and each of its Proponent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to the RFP Documents, the Program and the Project Agreement, including all existing conditions affecting the Program. The Proponents' and the Proponent Team Members' obligations set out in this RFP Section 2.5 apply irrespective of any Background Information available through MERX or One Window or information contained in the RFP Documents or in responses to RFIs. The Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the Sponsors is more particularly set out in the Project Agreement.
- (2) The Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents or Proponent Team Members available through MERX as Background Information or on One Window or of any other background or reference information or documents prepared by the Government of Ontario or by third parties and which may be made available to Proponents or Proponent Team Members by or through the Sponsors. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponents' and Proponent Team Members' sole risk and without recourse against the Sponsors or the Government of Ontario.
- (3) Each Proponent acknowledges and agrees that:

- (a) the indicative list of Program Indigenous Communities provided to the Proponent as Background Information represents data that was in effect as of a particular point in time and may be updated by the Sponsors from time to time; and
 - (b) the Sponsors do not warrant nor guarantee to the Proponent that the Proponent will be able to source (in whatever matter or form) any services and/or work from the Program Indigenous Communities in order to implement the Indigenous Engagement and Participation Plan.
- (4) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 2.5 shall survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit a Proposal.

SECTION 3. THE RFP PROCESS

3.1 RFP Process Timetable

- (1) The deadline for the submission of the Proposal Submission (the “**Proposal Submission Deadline**”), and the general timetable for the RFP Process (the “**Timetable**”) is set out in the RFP Data Sheet.
- (2) The Sponsors may amend the Timetable in their sole discretion:
 - (a) at any time prior to the Proposal Submission Deadline for events that are to occur prior to or on the Proposal Submission Deadline, including the Proposal Submission Deadline itself; and
 - (b) at any time in the RFP Process for events that are to occur after the Proposal Submission Deadline.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

- (1) Except as set out in RFP Section 3.4.2, the Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the contact person or contact persons named in the RFP Data Sheet (the “**Contact Person**” or “**Contact Persons**”, as applicable) electronically at the coordinates listed in the RFP Data Sheet and the questions shall be submitted in accordance with RFP Section 3.2.2 and shall be submitted in the form provided on MERX.

3.2.2 Clarification/RFI Submission Process

- (1) In addition to the requirement set out in RFP Section 3.2.1, the following rules shall apply to Proponents when submitting questions or RFIs to the Sponsors during the RFP Process:

-
- (a) Proponents are permitted to submit RFIs in the form provided on MERX categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Proponents (“**General RFIs**”); and
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”);
 - (b) if the Sponsors disagree with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsors will give the Proponent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;
 - (c) if the Sponsors determine, in their sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or the RFP Process to Proponents, the Sponsors may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and
 - (d) if the Sponsors agree with the Proponent’s categorization of a Commercially Confidential RFI, then the Sponsors will provide a response to that RFI to only the Proponent that submitted the RFI.
- (2) Responses to RFIs prepared and circulated by the Sponsors are not RFP Documents and do not amend the RFP Documents. If, in the Sponsors’ sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.6. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.
 - (3) Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.
 - (4) Proponents shall submit all RFIs electronically to the Contact Person in accordance with the instructions set out in the RFP Data Sheet.
 - (5) The Sponsors will respond to RFIs in written responses circulated to Proponents in accordance with the schedule set out in the Timetable. The Sponsors may, in their sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI. The Sponsors are not obligated to respond to each RFI submitted by Proponents under this RFP Section 3.2.2.

- (6) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with this RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. None of the Sponsors and the Government of Ontario is responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, the Background Information, responses to RFIs, any documents uploaded to MERX or any other type of information provided by, or communication made by, the Sponsors or the Government of Ontario.

3.2.3 RFP Documents Comments

- (1) The Sponsors may, in their sole discretion, request Proponents to submit comments on the RFP Documents and, in particular, comments on the Project Agreement. Whether the Sponsors intend to permit or require the submission of such comments and the schedule and format for the submission of those comments is set out in the RFP Data Sheet. The Sponsors are not obligated to respond to each comment made by Proponents under this RFP Section 3.2.3. If the Sponsors accept a comment, or part of a comment, and that acceptance requires a change to the RFP Documents, the Sponsors shall implement that change by Addendum.

3.3 **Communications Restrictions**

3.3.1 Communications with Municipalities, Other Government Authorities and Utilities

- (1) Subject to the restrictions in RFP Section 3.3.2 and any applicable requirements of the Project Agreement, no Proponent, Proponent Team Member or Advisor (other than the Preferred Proponent and the Successful Proponent and its Advisors) are permitted to communicate directly with any municipality, utility (including any local distribution company) or Ontario One Call in relation to the Program.
- (2) None of the Sponsors and the Government of Ontario is, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors receive or believe they may have received from a municipality, a government authority, or a utility. Proponents, Proponent Team Members and their respective Advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors or the Government of Ontario. Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.3.1(2) shall survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit a Proposal.

3.3.2 Prohibited Contacts and Lobbying Prohibition

- (1) Proponents and Proponent Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.
- (2) Without limiting the generality of RFP Section 3.3.1(2), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following Persons or organizations on matters related to the RFP Process, the RFP Documents or the Proposals:
 - (a) any member of the Evaluation Committee;
 - (b) any Advisor to the Sponsors or the Evaluation Committee;
 - (c) any employee or representative of:
 - (i) the Sponsors;
 - (ii) MOI or any other Ministry, agency or entity listed in the RFP Data Sheet; or
 - (iii) the Premier of Ontario's office or the Ontario Cabinet office;
 - (d) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
 - (e) any directors, officers or consultants of any entity listed in RFP Sections 3.3.2(2)(a) to (d).
- (3) If a Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives, in the opinion of the Sponsors, contravenes RFP Section 3.3.2(1) or (2), the Sponsors may, in their sole discretion:
 - (a) take any action in accordance with RFP Section 7.1.2; or
 - (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

For clarity, the Sponsors are not obliged to take the actions set out in RFP Section 3.3.2(3)(a) or (b).

3.3.3 Media Releases, Public Disclosures and Public Announcements

- (1) A Proponent shall not, and shall ensure that its Advisors, employees, representatives and Proponent Team Members, and their respective Advisors, employees and representatives, do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on

the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents, the Program or any matters related thereto, without the prior written consent of the Sponsors.

- (2) Neither the Proponents or the Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsors' prior written consent, which consent may be withheld in the Sponsors' sole discretion. Notwithstanding this RFP Section 3.3.3(2), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.
- (3) For the purpose of greater clarity, RFP Section 3.3.3(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Program with prospective subcontractors or other Proponent Team Members but such disclosure is permitted only to the extent necessary to solicit those parties' participation in the Program.

3.3.4 Restrictions on Communications between Proponents – No Collusion

- (1) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Proposal or the Proposal of any other Proponent in a fashion that would contravene Applicable Law. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.
- (2) For greater clarity, RFP Section 3.3.4(1) applies to Proponents, Proponent Team Members and their respective Advisors, employees and representatives.

3.4 Meetings with Proponents

3.4.1 General Proponents Meeting(s)

- (1) The Sponsors may, in their sole discretion, convene one or more general Proponents meetings (each, a "**Proponents Meeting**"). If the Sponsors elect to hold Proponent Meeting(s), the date(s) of such meeting(s) will be set out in the Timetable, and other logistical information with respect to such meeting(s) will be set out in the RFP Data Sheet. The Sponsors may, in their sole discretion and as set out in the RFP Data Sheet, conduct one or more of the Proponents Meetings in a virtual format. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Proponents Meeting is at the Proponent's sole risk and responsibility.
- (2) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the Sponsors may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued in writing.

Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2.2 for response in accordance with RFP Section 3.2.2.

- (3) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meetings by the Sponsors or any of their respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.6.
- (4) If the Sponsors hold Proponents Meetings, the Fairness Advisor/Monitor may be present during some or all of those meetings.

3.4.2 Commercially Confidential Proponent Meetings

- (1) The Sponsors may, in their sole discretion, convene commercially confidential meetings (“**Commercially Confidential Meetings**”), which may include the Consultation Sessions described in Schedule 2 to this RFP, between the Sponsors and their representatives and Advisors and individual Proponents and their representatives and Advisors to discuss other matters related to the RFP Process or the Proponents’ Proposals.
- (2) If the Sponsors elect to hold Commercially Confidential Meetings, the dates of such meetings will be set out in the Timetable, and other logistical information with respect to such meeting(s) will be set out in the RFP Data Sheet. The Sponsors may, in their sole discretion and as set out in the RFP Data Sheet, conduct one or more of the Commercially Confidential Meetings in a virtual format. While attendance at Commercially Confidential Meetings by Proponents is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Commercially Confidential Meeting is at the Proponent’s sole risk and responsibility.
- (3) If the Sponsors hold Commercially Confidential Meetings, the Fairness Advisor/Monitor may be present during some or all of those meetings.
- (4) No oral or written statement, consent, waiver, acceptance, approval or anything else said or done by the Sponsors or any of their respective Advisors, employees or representatives or by any stakeholder of the Program during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 to this RFP shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by the Proponents, the Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.6.
- (5) Each Proponent, its Proponent Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:

- (a) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Program during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 to this RFP is not and shall not be deemed or considered to be an indication of a preference by the Sponsors or the Government of Ontario or a rejection by the Sponsors or the Government of Ontario of anything said or done by the Proponent, the Proponent Team Member or any of their respective Advisors or representatives;
- (b) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Program during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 to this RFP shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Project Agreement, the Program or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.6, provided that the Sponsors shall not be under any obligation to confirm any information by Addendum;
- (c) the Sponsors may share process-related information, including clarifying information, with all Proponents if the need arises; and
- (d) the Proponent, its Proponent Team Members and their respective Advisors and representatives:
 - (i) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the RFP;
 - (ii) waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent, Proponent Team Member or their respective Advisors or representatives that was not received by the Proponent, Proponent Team Member or any of their respective Advisors or representatives; and
 - (iii) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

3.5 Changes to Identified Proponent Parties

- (1) Proponents shall not change their shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange),

Proponent Team Members, Key Individuals/Advisors, proposed subcontractors, or other parties identified in the Proponents' Prequalification Submissions (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors.

- (2) Without limiting the generality of the foregoing, Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section 3.5.
- (3) No later than the Proposal Submission Deadline, a Proponent may request a change in its Identified Proponent Parties, including any proposed withdrawal from, addition to, or substitution of the Identified Proponent Parties, (each a "**Proposed Change in Identified Proponent Party**") by delivering a request notice to the Contact Person, requesting the Sponsors' consent to such Proposed Change in Identified Proponent Party.
- (4) If an Identified Proponent Party withdraws from the RFP Process in a manner that does not make it possible for the Proponent to deliver the request notice in advance of obtaining the Sponsors' consent, the Proponent shall notify the Sponsors of the withdrawal as soon as the Proponent becomes aware of the withdrawal and shall deliver a further request notice to the Contact Person, requesting the Sponsors' consent to a Proposed Change in Identified Proponent Party, either by substituting or proceeding without any substitute of the withdrawn Identified Proponent Party, such request notice to be delivered by five (5) Business Days following the occurrence of the date of withdrawal or the Proposal Submission Deadline, whichever is earlier.
- (5) A request notice delivered under either RFP Sections 3.5(3) or 3.5(4), as applicable, shall:
 - (a) clearly identify the Proposed Change in Identified Proponent Party (including, as applicable, the continuation of in the absence of a withdrawn Identified Proponent Party, or any proposed additional or substitute Identified Proponent Party);
 - (b) attach and provide (i) an updated Proponent Team Member Declaration, and (ii) an updated Conflicts of Interest Screening List;
 - (c) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors in their sole discretion, that the Proposed Change in Identified Proponent Party will not materially adversely affect the Proponent's ability to submit a complete and compliant Proposal or impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Project Agreement; and
 - (d) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors in their sole discretion, that the reconstituted Proponent team (whether through addition, substitution or continuation without replacement of a withdrawal of one or more of the Identified

Proponent Parties, as applicable) would have met or exceeded any applicable criteria applied during the RFQ Process.

- (6) In reviewing a request made in accordance with RFP Section 3.5(5), the Sponsors may, in their sole discretion, and at any time, instruct the Proponent to deliver further documentation or additional information as may be reasonably requested by the Sponsors to assess any Proposed Change in Identified Proponent Party. When a request for further documentation or additional information is made by the Sponsors, the Proponent shall deliver such information and documentation as soon as possible and in any event no later than the deadlines set out in RFP Sections 3.5(3) or 3.5(4), as applicable. The Sponsors are under no obligation to consider any further documentation or additional information delivered after the applicable deadline.
- (7) With respect to any request for a Proposed Change in Identified Proponent Party, the Sponsors may, in their sole discretion, do any one or more of the following, as applicable:
 - (a) consent to or reject the Proposed Change in Identified Proponent Party;
 - (b) impose such other terms and conditions as the Sponsors may require in connection with any consent to a Proposed Change in Identified Proponent Party; and/or
 - (c) following a rejection of a Proposed Change in Identified Proponent Party where such Proposed Change in Identified Proponent Party involves a substitution of an Identified Proponent Party, permit the Proponent to deliver a further request notice for a Proposed Change in Identified Proponent Party identifying an alternate substitute for review by the Sponsors, subject to the same deadlines, terms, conditions and standard of review as set out in this RFP Section 3.5.
- (8) For greater certainty, no Proposed Change in Identified Proponent Party shall be permitted where such Proposed Change in Identified Proponent Party would result in a Prime Team Member of a Proponent team being a Proponent Team Member (except as a lender in a non-financial advisory role) of more than one Proponent team participating in the RFP Process.
- (9) The Sponsors may, in their sole discretion, disqualify a Proponent and terminate a Proponent's continued involvement in the RFP Process or allow a Proponent to continue under such terms and conditions as the Sponsors may require, in their sole discretion, in the event of any of the following:
 - (a) an actual change in any Identified Proponent Party is made at any time during the RFP Process by the Proponent without obtaining prior consent of the Sponsors (including any withdrawal of an Identified Proponent Party described in RFP Section 3.5(4));

- (b) a Proposed Change in Identified Proponent Party is made after the deadlines set out in RFP Sections 3.5(3) or 3.5(4), as applicable; or
 - (c) a change in circumstances with respect to a Proponent after Proposal Submission Deadline that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Project Agreement.
- (10) If, at any time during the RFP Process, a Prime Team Member of any Proponent team has publicly announced and/or entered into a binding agreement that would give rise to a Change in Control involving a merger with or acquisition of another Proponent Team Member (or Prime Team Member) of a different Proponent team (each of the Prime Team Member and Proponent Team Member(s) are referred to as an "**Impacted Participant**"), then, each Impacted Participant shall deliver a notice to the Sponsors disclosing the announced and/or agreed Change in Control as soon as practicable, but in any event not later than three (3) Business Days following the public announcement or entry into the binding agreement. Notices delivered pursuant to this RFP Section 3.5(9)(c) shall also indicate whether the Impacted Participants wish to be treated as one Proponent team or wish to remain on separate teams for the duration of the RFP Process.
- (11) Upon the receipt of a notice required by RFP Section 3.5(9)(c) indicating that the Impacted Participants wish to remain on separate teams for the duration of the RFP Process, and in anticipation of the Change in Control, the Sponsors may, in their sole discretion, require the delivery of assurances and agreements from both of the affected Proponent teams and their respective Impacted Participants regarding the implementation of safeguards necessary to protect the integrity of the RFP Process, to the satisfaction of the Sponsors, in their sole discretion.
- (12) If, at any time during the RFP Process, there is either (i) a Change in Control of a Proponent bidding or of one of its Prime Team Members as a result of a merger with or an acquisition of that Proponent or Prime Team Member by one of the other Proponents or one of the other Proponent's Prime Team Members or Proponent Team Members, or (ii) the consummation of a Change in Control previously announced and disclosed pursuant to RFP Section 3.5(9)(c), then the Sponsors may, in their sole discretion, allow the Impacted Participants to continue in the RFP Process subject to the following:
 - (a) the Sponsors may, in their sole discretion, impose terms and conditions on the continued participation of the Impacted Participants in the RFP Process. Such terms and conditions may include the provision of new or additional assurances from, and a new agreement with, any new (or changed) entity(s) created as a result of the Change in Control;
 - (b) if one or both of the Impacted Participants, or any new entity(s) created as a result of the Change in Control fail to satisfy the conditions imposed by the Sponsors pursuant to this RFP Section 3.5(12), the Sponsors may, in

their sole discretion, require the applicable Proponent(s) to remove one or both of the Impacted Participants from their respective Proponent team(s);

- (c) if the Sponsors require the removal of one or both of the Impacted Participants pursuant to RFP Section 3.5(12)(b), the Proponents that are affected by such disqualification must request a change to their Proponent teams to deal with the disqualification. The Sponsors shall review such request, in their sole discretion;
- (d) in the event that a request to change the Proponent's team pursuant to RFP Section 3.5(12)(c) is rejected by the Sponsors, the Sponsors may, in their sole discretion, disqualify the Proponent from continuing in the RFP Process; and
- (e) in making the determination contemplated in RFP Section 3.5(12)(d), the Sponsors may elect, in their sole discretion, to allow the Impacted Participant that is the acquirer to continue in the RFP Process.

3.6 Addenda/Changes to the RFP Documents

- (1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Proposal Submission Deadline (for matters relating to the Proposal Submission). The Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors or the Sponsors' Advisors, employees or representatives, including, for clarity, the Contact Person, or any other Person, shall amend the RFP Documents. The approximate final date that the Sponsors will issue an Addendum in respect of the Project Agreement is set out in the Timetable. The Sponsors may issue other Addenda at any time.
- (2) Each Proponent is solely responsible for ensuring that it has received all Addenda issued by the Sponsors. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.
- (3) The Sponsors shall issue Addenda by uploading them to MERX and notifying the Proponents' Representatives by e-mail that an Addendum has been uploaded to MERX.
- (4) Any such notification by the Sponsors is a courtesy only and the Proponents are solely responsible to ensure that they reviewed all documents available on MERX in accordance with RFP Section 2.4(4) and, in particular, have reviewed all documents available on MERX immediately prior to submitting the Proposals.
- (5) Any reference to any one or all of the RFP Documents in the RFP Documents includes any amendments to the RFP Documents made in accordance with this RFP Section 3.6.

3.7 Freedom of Information, Confidentiality and Copyright Matters

3.7.1 Freedom of Information and Protection of Privacy Act

- (1) Proponents are advised that the Sponsors may be required to disclose the RFP Documents, Background Information, and a part or parts of any Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) (“**FIPPA**”).
- (2) Proponents are also advised that FIPPA does provide protection for confidential and proprietary business information. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.
- (3) Subject to the provisions of FIPPA, the Sponsors will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed based on an order or decision in accordance with FIPPA or otherwise as required under Applicable Law.

3.7.2 Confidentiality Agreements

- (1) Each Prequalified Party has executed a confidentiality agreement which applies to Confidential Information in connection with the RFP Process. To the extent that the provisions of the confidentiality agreement are inconsistent or conflict with the requirements of RFP Section 3.7.3, the more stringent confidentiality requirements shall govern.

3.7.3 Confidential Information

- (1) For the purpose of the RFP Process, “**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by or on behalf of the Sponsors or the Government of Ontario in connection with the RFP Process, the RFP Documents or the Program, whether supplied, obtained from or provided before or after the RFP Process.
- (2) Each Proponent agrees that all Confidential Information:
 - (a) shall remain the sole property of the Sponsors or the Government of Ontario, as applicable, and the Proponent shall treat it as confidential;
 - (b) shall not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to the RFP Process or the performance of any subsequent agreement relating to the Program with the Signing Parties;
 - (c) shall not be disclosed by the Proponent to any Person who is not involved in the Proponent’s preparation of its Proposal in response to the RFP

- Process or the performance of any subsequent agreement relating to the Program with the Signing Parties, without prior written consent of the Sponsors or the Government of Ontario, as applicable;
- (d) shall not be used in any way detrimental to the Sponsors or the Government of Ontario; and
 - (e) if requested by the Sponsors, shall be returned by the Proponents to the Sponsors no later than ten (10) calendar days after that request.
- (3) Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.7.3 by any Person to whom it discloses the Confidential Information including, for greater clarity, the Proponent's employees, representatives and Advisors and the Proponent Team Members and their employees, representatives and Advisors. Each Proponent shall indemnify each of the Sponsors and the Government of Ontario and each of their related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.7.3 by the Proponent or by any Person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the Sponsors act as trustee for each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or the Government of Ontario or any of their respective directors, officers, consultants, employees, agents or representatives and that the Sponsors have agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives.
- (4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.7.3 would cause the Sponsors and the Government of Ontario and each of their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors and the Government of Ontario and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.7.3 upon application to a court of competent jurisdiction without proof of actual damage to the Sponsors or the Government of Ontario or any of their related entities.
- (5) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.7.3 shall survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit a Proposal.
- (6) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:

- (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
- (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the Sponsors, and provided that it was not acquired by the Proponent under an obligation of confidence; or
- (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

3.7.4 Copyright and Use of Information in Proposals

- (1) The Sponsors' rights, as set out in this RFP Section 3.7.4, to the Proposal and all Proposal Information submitted by the Proponent during the RFP Process shall be granted to the Sponsors in accordance with this RFP Section 3.7.4 upon submission of a Proposal.
- (2) Proponents shall not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Program.
- (3) All requirements, designs, documents, plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the property of the Sponsors. Upon request of the Sponsors, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the Sponsors.
- (4) The Proponent shall grant to each of the Sponsors and His Majesty the King in right of Ontario a non-exclusive, perpetual, irrevocable, worldwide, fully paid and royalty free license (fully assignable without the consent of the Proponent and with the right to sub-license without the consent of the Proponent) to use the Proposal Information (the "**Proposal Information Licence**"). Without limiting the foregoing, the Proposal Information Licence shall include the right to modify the Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except ISP in relation to the Program, be liable to the Sponsors, His Majesty the King in right of Ontario or to any other Person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.
- (5) The Proponent shall procure that the Sponsors' rights to the Proposal under RFP Section 3.7.4 and all information submitted by the Proponent during the RFP Process shall be granted to the Sponsors upon submission of the Proposal.

- (6) For the purpose of this RFP Section 3.7.4, “**Proposal Information**” includes:
- (a) all information contained in a Proposal or which is disclosed by or through a Proponent to the Sponsors during the evaluation of Proposals or during the process of executing any Project Agreement; and
 - (b) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Project Agreement.
- (7) Proponents shall ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give Infrastructure Ontario, the Client and His Majesty the King in right of Ontario the rights set out in this RFP Section 3.7.4. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of Infrastructure Ontario, the Client or His Majesty the King in right of Ontario to use any of the Proposal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against the Sponsors, His Majesty the King in right of Ontario, and each of their respective Advisors, and that the provisions of this RFP Section 3.7.4 shall take precedence and govern.

3.7.5 Open Data Directive

- (1) Proponents acknowledge that the RFP Documents and a part or parts of any Proposal are subject to the Open Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

3.8 **Conflict of Interest and Ineligible Persons**

3.8.1 Conflict of Interest

- (1) Proponents and Proponent Team Members and each of their Advisors, shall disclose, in their Proponent Team Member Declaration (in respect of Proponent Team Members), all perceived, potential and actual Conflicts of Interest.
- (2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of its Proposal, discovers any perceived, potential or actual Conflict of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.
- (3) At the request of the Sponsors, the Proponent shall provide the Sponsors with the Proponent’s proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent

shall submit any additional information to the Sponsors that the Sponsors consider necessary to properly assess the perceived, potential or actual Conflict of Interest.

- (4) The Sponsors may, in their sole discretion, exclude any Proponent Team Member or Advisor to the Proponent on the grounds of Conflict of Interest.
- (5) Without limiting the generality of RFP Sections 3.8.1(4) or (6), the Sponsors may, in their sole discretion, require the Proponent, Proponent Team Member or a Proponent's Advisor to substitute a new Person or entity for the Person or entity giving rise to the Conflict of Interest.
- (6) The Sponsors may, in their sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of Proponents or Proponent Team Members, or any of their respective Advisors. A waiver may be upon such terms and conditions as the Sponsors, in their sole discretion, require to satisfy themselves that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the Sponsors, in their sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
- (7) For the purposes of the RFP Process "**Conflict of Interest**" includes any situation or circumstance where a Proponent, any Proponent Team Member, any Advisor to the Proponent or any of the employees of a Proponent, Proponent Team Member or Advisor to the Proponent engaged in the development or oversight of development of the Proponent's Proposal (including for such employees in their personal capacities):
 - (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsors or their Advisors; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Project Agreement if that Proponent was determined to be the Successful Proponent under the RFP Process;
 - (b) has contractual or other obligations to any of the Sponsors that could or could be seen to have been compromised or impaired as a result of its participation in the RFP Process or the Program; or
 - (c) has knowledge of confidential information (other than Confidential Information disclosed by the Sponsors in the normal course of the RFP Process) of strategic and/or material relevance to the RFP Process or to the Program that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.

- (8) The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Sponsors in their sole discretion.

3.8.2 Ineligible Persons

- (1) As a result of their involvement in the Program, the Persons named as “**Ineligible Persons**” in the RFP Data Sheet, together with any Persons who formerly worked on behalf of either of the Sponsors and in the course of such work had knowledge of confidential information of strategic and/or material relevance to the RFP Process or to the Program that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage (collectively, “**Ineligible Persons**”), their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of the Program and, subject to RFP Sections 3.8.2(3) and 3.8.2(4) any Person controlled by, that controls or that is under common control with the Ineligible Persons (each an “**Ineligible Person’s Affiliate**”) are not eligible to participate as a Proponent Team Member or Advisor to any Proponent or to a Proponent Team Member.
- (2) The Sponsors may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.
- (3) An Ineligible Person’s Affiliate may be eligible to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member only after it has obtained a written consent from the Sponsors permitting it to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member, the Proponent must submit a request for consent to the Contact Person that includes the following information:
 - (a) the full legal name of the Ineligible Person’s Affiliate that the Proponent wishes to include on its team or as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member;
 - (b) information regarding the Ineligible Person’s Affiliate’s relationship to the Ineligible Person listed in the RFP Data Sheet; and
 - (c) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any perceived, potential or actual Conflict of Interest with respect to the Ineligible Person’s Affiliate.
- (4) Upon the Contact Person’s receipt of a Proponent’s properly completed request for consent in accordance with RFP Section 3.8.2(3), the Sponsors shall, in their sole discretion, make a determination as to whether they consider there to be a perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsors’ decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of

consent. If the Ineligible Person's Affiliate is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsors shall add the Ineligible Person's Affiliate to the Ineligible Persons list by Addendum.

3.8.3 Conflict of Interest Screening List

- (1) Proponents shall deliver to the Contact Person, no later than the Proposal Submission Deadline, the list of Identified Proponent Parties and other significant individuals having involvement in the preparation and/or oversight of the preparation of the Proposal in the form attached as Form 2 to Schedule 3 Part A to this RFP, which list shall be used by the Sponsors in their assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Proponent, Identified Proponent Party or any employee or Advisor of the Proponent in respect of the Program.

3.9 **Participation by Proponent Team Members and Legal Advisors on More than One Proponent Team**

3.9.1 Subject to RFP Section 3.5, a Prime Team Member of one Proponent, or any Person related thereto, may not be a Proponent Team Member (except as a lender in a non-financial advisory role) or otherwise participate in the Proposal Submission of any other Proponent.

3.9.2 RFP Sections 3.5, 3.3.4 and 3.9.1 do not prohibit a Proponent Team Member of one Proponent from also being a Proponent Team Member of another Proponent, provided that:

- (1) such Proponent Team Member is not:
 - (a) a Prime Team Member of any other Proponent;
 - (b) an Affiliate of a Prime Team Member of any other Proponent; or
 - (c) otherwise ineligible to do so,
- (2) such Proponent Team Member uses separate internal teams to support each Proponent team and employs appropriate ethical screens and safeguards to prevent collusion and ensure compliance with the requirements described in RFP Section 3.3.4; and
- (3) upon request of the Sponsors, each impacted Proponent team shall provide the Sponsors with confirmation of compliance with RFP Section 3.9.2(2) within the timeframe requested by the Sponsors and in the format requested by the Sponsors.

3.9.3 A legal advisor is not permitted to advise a Prime Team Member of more than one Proponent (or prospective Proponent) in relation to a Proposal Submission or the RFP Process.

3.9.4 Without limiting RFP Section 3.9.3, a legal advisor may advise a Prime Team Member of one Proponent (or prospective Proponent) while also advising a Proponent Team Member (that is not a Prime Team Member) of another Proponent (or prospective Proponent) in relation to their respective Proposal Submissions or the RFP Process, provided that:

- (1) the legal advisor has obtained appropriate consent from each Proponent Team Member of each Proponent impacted by the potential Conflict of Interest;
- (2) the legal advisor has established appropriate ethical screens and safeguards to prevent collusion among Proponents and to prevent disclosure of confidential information of any Proponent; and
- (3) upon request of the Sponsors, each impacted Proponent shall provide the Sponsors with confirmation of compliance with RFP Section 3.9.4(1) and 3.9.4(2) within the timeframe requested by the Sponsors and in the format requested by the Sponsors.

3.10 Exclusivity Arrangements with Installers

- (1) Proponents and Proponent Team Members shall not, at any time during the RFQ Process or the RFP Process, enter into exclusivity arrangements with any Installer, including a prospective Installer.
- (2) As a condition to participating in the RFP Process, each Proponent Team Member will be required to confirm that it is in compliance with RFP Section 3.10(1).
- (3) The Sponsors may, in their sole discretion, disqualify a Proponent, or reject a Proposal from a Proponent, where the Proponent or any Proponent Team Member fails to comply with a requirement prescribed by the Sponsors pursuant to this RFP Section 3.10.

3.11 Proponent Costs

- (1) The Proponents and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in the RFP Process, including all costs and expenses related to the Proponents' involvement in:
 - (a) the preparation, presentation and submission of their Proposals;
 - (b) attendance at any Proponents Meeting, Commercially Confidential Meeting or any other meeting with the Sponsors;
 - (c) due diligence and information gathering processes;
 - (d) preparation of responses to questions or requests for information from the Sponsors;

- (e) preparation of the Proponent's own RFIs during the clarification process; and
 - (f) negotiations, including in relation to finalizing the Project Agreement.
- (2) The Sponsors are not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

SECTION 4. PROPOSAL FORM AND CONTENT REQUIREMENTS

4.1 Format and Content of the Proposal

- (1) Proponents shall submit Proposals organized in accordance with and in the format set out in Schedule 3 to this RFP.
- (2) Proponents shall submit Proposals in three parts as follows:
 - (a) Part 1 – the Proponent Team Member forms in accordance with Schedule 3 Part A to this RFP, consisting of:
 - (i) Proponent Team Member Declaration (Form 1 to Schedule 3 Part A to this RFP); and
 - (ii) Conflicts of Interest Screening List (Form 2 to Schedule 3 Part A to this RFP).
 - (b) Part 2 – the technical submission (the “**Technical Submission**”) in accordance with Schedule 3 Part B to this RFP, consisting of:
 - (i) Technical Conformance Elements (Section B1 of Schedule 3 Part B);
 - (ii) Network Coverage & Project Plan (Section B2 of Schedule 3 Part B);
 - (iii) Quality Management & Service Parameters (Section B3 of Schedule 3 Part B); and
 - (iv) Customer Experience & Support Plan (Section B4 of Schedule 3 Part B).
 - (c) Part 3 – the financial submission (the “**Financial Submission**”) in accordance with Schedule 3 Part C to this RFP, consisting of:
 - (i) Financial Document Requirements (Part A of Schedule 3 Part C to this RFP);
 - (ii) Bid Price Requirements (Part B of Schedule 3 Part C to this RFP);

- (iii) Bid Price Form (Part C of Schedule 3 Part C to this RFP); and
 - (iv) CFO Certificate Form (Part D of Schedule 3 Part C to this RFP).
- (3) Proponents shall submit each of Parts 1, 2, and 3 of their Proposals in accordance with the requirements and instructions set out in Schedule 3 to this RFP.

SECTION 5. SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL

5.1 Submission of Proposal

- (1) Each Proponent shall submit its Proposal Submission on or before the Proposal Submission Deadline. For the purposes of the RFP Process, the determination of whether the Proposal Submission has been submitted on or before the Proposal Submission Deadline shall be based on the time and date stamp the Proponent receives from the MERX Electronic Bid Submission System (the “**EBS**”). A Proposal Submission received after the Proposal Submission Deadline, as documented by the electronic time and date stamp, shall be returned unopened to the sender.
- (2) Proponents shall submit their Proposal Submission using only the method set out in the RFP Data Sheet. Detailed guidance on the electronic submission process will be provided to all Proponents as a user guide on MERX for information purposes. The user guide is not an RFP Document and does not amend the RFP Documents. It is the sole responsibility of the Proponent to ensure that the Proposal Submission is received by Infrastructure Ontario prior to the Proposal Submission Deadline, and to ensure it receives a date and time stamp receipt from the EBS confirming its timely delivery. The Sponsors will not accept a Proposal Submission delivered by electronic mail.
- (3) Proponents shall provide electronic copies of their Proposal Submission in the formats specified in Schedule 3 to this RFP.
- (4) If there is any difference whatsoever between the electronic copies of the Proposal Submission in PDF format and native file format submitted through the EBS, the copy of the Proposal Submission in the PDF format submitted through the EBS shall govern.

5.2 Withdrawal of Proposals

- (1) A Proponent may withdraw its Proposal Submission using the EBS before the Proposal Submission Deadline.
- (2) Any Proponent that fails to submit a Bid Price as part of its Proposal Submission shall be deemed to have withdrawn its Proposal Submission.

5.3 Amendment of Proposal

- (1) Proponents may amend their Proposal Submission after submission but only if the Proposal Submission is resubmitted on or before the Proposal Submission Deadline, in accordance with the following:
 - (a) the Proponent shall withdraw its original Proposal Submission using the EBS before the Proposal Submission Deadline; and
 - (b) the Proponent shall submit a revised replacement Proposal Submission in accordance with the RFP Documents and on or before the Proposal Submission Deadline in accordance with the requirements of RFP Section 5.1.

5.4 Proposal Irrevocability

- (1) Except as provided in RFP Sections 5.5(1) and the Proponent's right to withdraw a Proposal Submission before the Proposal Submission Deadline, the Proposal of a Proponent shall be irrevocable and shall remain in effect and open for acceptance until (i) the date on which such Proponent is notified by the Sponsors that the Proponent is not the Preferred Proponent or the Alternate Proponent for the Program, (ii) where the Proponent is identified as a Preferred Proponent or an Alternate Proponent for the Program, one hundred sixty-five (165) days after the Proposal Submission Deadline, or (iii) until Commercial Close has been achieved, whichever occurs first for such Proponent (the "**Proposal Validity Period**").

5.5 Extension of Proposal Validity Period

- (1) If the Sponsors wish to extend the Proposal Validity Period, the Sponsors shall submit a request to extend to those Proponents whose Proposals, in the Sponsors' sole discretion, are still under consideration in the RFP Process. For the purpose of greater clarity, the Sponsors may issue a request to extend the Proposal Validity Period after the Preferred Proponent and the Alternate Proponent have already been identified. A Proponent may, in its discretion, refuse to extend the Proposal Validity Period in accordance with the following:
 - (a) notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proponent's Proposal shall continue to be valid in accordance with the original Proposal Validity Period for such Proposal; and
 - (b) if the Sponsors determine that they will be unable to determine the Preferred Proponent or reach Commercial Close prior to the expiration of the original Proposal Validity Period for all Proposals, the Sponsors may discontinue the evaluation or consideration of a Proponent or finalization of a Project Agreement with a Preferred Proponent or Alternate Proponent if that Proponent has refused the Sponsors' request to extend the Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.

- (2) In respect of a Preferred Proponent, the Sponsors shall be considered to have accepted a Preferred Proponent's Proposal prior to the expiration of the Proposal Validity Period if the Signing Parties and the Preferred Proponent reach Commercial Close prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable).

SECTION 6. EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

6.1 Evaluation Committee and Advisors

- (1) The Sponsors will establish an evaluation committee (the "**Evaluation Committee**") for the purpose of reviewing and evaluating Proposal Submissions in accordance with the RFP Documents. The Sponsors, in their sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the Sponsors' Advisors, and any other employees or representatives of the Sponsors in any manner determined necessary or desirable by the Sponsors.
- (2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the Sponsors.

6.2 Sponsors' Clarification and Verification of Proposals

- (1) The Sponsors may:
 - (a) require a Proponent to clarify or verify the contents of its Proposal or any statement made by the Proponent;
 - (b) require a Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal; and
 - (c) seek a Proponent's acknowledgement of the Sponsors' interpretation of the Proposal or any part of the Proposal.
- (2) The Sponsors are not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.

- (3) Any written information received by the Sponsors from a Proponent pursuant to a request for clarification or verification from the Sponsors as part of the RFP Process may, in the Sponsors' sole discretion, be considered as an integral part of the applicable Proposal.

6.3 Determination of Compliance

- (1) For purposes of this RFP, a Proposal is "non-compliant" and does not "comply" or achieve "compliance" with the requirements of the RFP Documents if that Proposal contains a **"Material Deviation"**. A Material Deviation is:
 - (a) any failure in a Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsors:
 - (i) impedes, in any material way, the ability of the Sponsors to evaluate the Proposal;
 - (ii) constitutes an attempt by the Proponent to revise the Sponsors' or the Proponent's rights or obligations under the RFP Documents or affects the Sponsors' ability to enforce the Proponent's obligations pursuant to the RFP Documents in a way not permitted by this RFP; or
 - (iii) constitutes an attempt by the Proponent to revise the Sponsors' or the Proponent's rights or obligations under the Project Agreement.
- (2) A requirement in either this RFP or in the Schedules to this RFP that a Proponent "must" or "shall" do anything is not intended to supersede the concepts of "comply", "compliance" or "Material Deviation" or any other portion of this RFP Section 6.3.
- (3) Each Proponent acknowledges and agrees that the Sponsors' evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsors may waive:
 - (a) any deviation that is not a Material Deviation at any time; and
 - (b) any Material Deviation in accordance with RFP Section 10.2(3).
- (4) The Sponsors may identify a Material Deviation in a Proposal at any time during the RFP Process (after the Proposal Submission Deadline) and, for clarity, at any step during the evaluation process set out in RFP Section 6.5.
- (5) Subject to RFP Section 6.3(3)(b), if the Sponsors determine that a Proposal is non-compliant in accordance with RFP Section 6.3, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare that the Proposal shall not be given any further consideration and take such action as permitted under RFP Section 7.1.2. If a declaration by the Sponsors that a Proposal is non-compliant occurs after the evaluation of that Proposal has commenced, any scores given to that Proposal shall be declared null and void.

6.4 Non-Compliance Distinguished from Poor Quality

- (1) A Proposal that contains a poor quality response and/or a failure to conform to a requirement of the RFP Documents shall not be deemed to be non-compliant and such poor quality response and/or failure to conform shall not be deemed to be a Material Deviation unless, and only unless, such poor quality response and/or failure to conform to the requirement of the RFP Documents, in the sole discretion of the Sponsors, meets the definition of a Material Deviation as set out in RFP Section 6.3(1) above.
- (2) A design compliance/conformance or technical compliance conformance review is only a tool to assist in the evaluation and scoring of the Proposal Submission. Notwithstanding the similarity of terminology, the determination of whether a Proposal, in its entirety, is compliant or non-compliant with the requirements of the RFP Documents is not the same as the concept of “design compliance”, “design conformance and/or non-conformance”, “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality made during the evaluation and scoring of a Proposal.
- (3) The quality of a Proposal, an assessment of which is made during the evaluation and scoring of such Proposal and which is separate and distinct from the assessment of the compliance of a Proposal, may be subject to one or more minimum scoring thresholds in accordance with Schedule 3 to this RFP.
- (4) A Proposal that does not contain any Material Deviations shall not be automatically presumed to pass any applicable minimum scoring threshold as set out in Schedule 3 to this RFP. Any assessment of “design compliance”, “design conformance and/or non-conformance”, “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality of a Proposal shall not result in any presumed score for that Proposal.
- (5) The submission of a compliant Proposal that contains a poor quality response and/or any failure by a Proponent to conform with any requirement of the RFP Documents which is not a Material Deviation does not derogate from the obligations of the Preferred Proponent pursuant to RFP Section 9.2, or of ISP under the Project Agreement to bring all aspects of a Proponent’s proposed design, fabrication, deployment, operation and maintenance into conformance with the requirements of the Project Agreement, pursuant to its terms.

6.5 Steps in the Evaluation Process

6.5.1 Step 1 – Review of the Proponent Team Member Forms

- (1) In Step 1 of the evaluation process, the Evaluation Committee shall review the Proponent Team Member forms set out in Schedule 3 Part A to this RFP to:
 - (a) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submission, except for changes

that have been approved by the Sponsors in accordance with RFP Section 3.5; and

- (b) assess the Conflict of Interest and Confidential Information sections of the Proposal Submission.
- (2) In the event that a Proponent fails to include in its Proposal Submission any of the required documents or information, as set out in Schedule 3 Part A to this RFP, the Proponent's Proposal will not continue to Step 2 of the evaluation process.

6.5.2 Step 2 – Compliance of Technical Submissions

- (1) In Step 2 of the evaluation process, the Evaluation Committee shall review each Technical Submission to assess whether it satisfies the requirements set out in Schedule 3 Part B to this RFP.
- (2) If the Sponsors identify a Material Deviation in the Technical Submission of a Proponent then, subject to RFP Section 6.3(3)(b), the Sponsors may determine that the Proposal to which the Technical Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).
- (3) In the event that the Sponsors declare a Proposal to be non-compliant before the opening of the Financial Submission, the Financial Submission of that Proponent will remain unopened and will not be evaluated. Unopened Financial Submissions will be returned to Proponents at the conclusion of the RFP Process.

6.5.3 Step 3 – Review, Evaluation and Scoring of the Technical Submissions

- (1) In Step 3 of the evaluation process, the Technical Submissions will be evaluated and scored in accordance with Schedule 3 to this RFP.
- (2) If a Proponent fails to achieve a "Pass" score for each of the Technical Conformance Elements set out in Schedule 3 Part B to this RFP, the Proponent's Proposal will not continue to be evaluated against the Technical Evaluation Elements and will not continue to Step 4 of the evaluation process. Additionally, the Financial Submission of that Proponent will remain unopened and will not be evaluated. Unopened Financial Submissions will be returned to Proponents at the conclusion of the RFP Process.
- (3) If a Proponent achieves a "Pass" score for each of the Technical Conformance Elements set out in Schedule 3 Part B to this RFP, then, the Evaluation Committee shall evaluate such Proponent's Proposal against the Technical Evaluation Criteria and determine the technical score for such Proponent based on how well such criteria meet or exceed the applicable requirements and objectives set out in Schedule 3 Part B (the "**Technical Score**").
- (4) If a Proponent fails to achieve the minimum scoring threshold as set out in the applicable provisions of Schedule 3 to this RFP, then, as part of Step 3 of the

evaluation process and pursuant to and in accordance with such provisions, the Sponsors may, in their sole discretion, determine whether that Proponent's Proposal will continue to be considered in the RFP Process.

- (5) If a Proponent fails to achieve the minimum scoring threshold as set out in the applicable provisions of Schedule 3 to this RFP and the Sponsors do not exercise their discretionary rights as set out in RFP Section 6.5.3(4), the Proponent's Proposal will not continue to Step 4 of the evaluation process. Additionally, the Financial Submission of that Proponent will remain unopened and will not be evaluated. Unopened Financial Submissions will be returned to Proponents at the conclusion of the RFP Process.

6.5.4 Step 4 – Compliance of Financial Submissions

- (1) In Step 4 of the evaluation process, the Evaluation Committee shall review each Financial Submission to assess whether it satisfies the requirements set out in Schedule 3 Part C to this RFP.
- (2) If the Sponsors identify a Material Deviation in the Financial Submission of a Proponent then, subject to RFP Section 6.3(3)(b), the Sponsors may determine that the Proposal to which the Financial Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).

6.5.5 Step 5 – Review, Evaluation and Scoring of the Financial Submissions

- (1) In Step 5 of the evaluation process, the Financial Submissions will be evaluated and scored in accordance with Schedule 3 Part C to this RFP.
- (2) If a Proponent fails to achieve a "Satisfactory" score for each of the Financial Submission Categories set out in Schedule 3 Part C to this RFP, the Proponent's Proposal will not continue to Step 6 of the evaluation process. Additionally, the Bid Price "envelope" of that Proponent will remain unopened and will not be evaluated. Unopened Bid Price "envelopes" will be returned to Proponents at the conclusion of the RFP Process.
- (3) If a Proponent achieves a "Satisfactory" score for each of the Financial Submission Categories set out in Schedule 3 Part C to this RFP, then, such Proponent's Proposal will be evaluated using the Bid Price formula and the Evaluation Committee shall determine the financial score for such Proponent in accordance with Section 3.2 of Schedule 3 Part C to this RFP (the "**Financial Score**").

6.5.6 Step 6 – Establishing a Final Proposal Score

- (1) For the purpose of the evaluation process, the weightings and scoring set out in Section 2.5 of Schedule 3 to this RFP will apply.
- (2) In Step 6 of the evaluation process, upon receipt by, and acceptance of, the Evaluation Committee of the results of the evaluation process and finalization of

the scores of all Proponents' Proposals in Step 3 and Step 5, the score for each Proposal will be tallied and finalized.

- (3) The score established based on this RFP Section 6.5.6 shall be the "**Final Proposal Score**".

6.5.7 Step 7 – Ranking the Proponents

- (1) In Step 7 of the evaluation process, the Evaluation Committee shall rank only those Proponents that have met all requirements in Steps 1 through 6 of the evaluation process and shall base the ranking on the Final Proposal Score determined in Step 6. The Proponent with the highest Final Proposal Score will be selected as the Preferred Proponent for the Program and the Proponent with the second highest Final Proposal Score will be selected as the Alternate Proponent for the Program.
- (2) In the event of a tie in the Final Proposal Score between two Proponents, the Sponsors may, in their sole discretion, give the higher ranking to the Proponent proposing the lowest Bid Price in its Proposal.

SECTION 7. GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

- (1) The Sponsors shall, in their sole discretion, determine:
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether a Proposal is compliant with the RFP Documents;
 - (c) whether a Prime Team Member or Proponent Team Member is disqualified;
 - (d) whether a failure to comply constitutes a Material Deviation;
 - (e) the evaluation and rankings of the Proposals; and
 - (f) whether a Proposal or a Proponent:
 - (i) is disqualified; or
 - (ii) will cease to be considered in the evaluation process.
- (2) The Sponsors' discretion in determining compliance, scores, ranking and disqualification of the Proponents and their Proposals is not limited or restricted in any way by the fact that the RFQ Process preceded the RFP Process.

- (3) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of the Proposals or in the exercise of any of the Sponsors' rights under this RFP:
 - (a) any instances of poor performance by a Proponent or any of its Proponent Team Members that the Sponsors have experienced, including during the RFQ Process; and/or
 - (b) any publicly available information about a Proponent or any of its Proponent Team Members that is, in the Sponsors' sole discretion, credible information.
- (4) Pursuant to the page limit restrictions applicable to any portion of a Proposal as described in this RFP, the Sponsors shall, without discretion, neither review nor score any pages of a Proposal that exceed the maximum number of pages specified for the applicable portion of the Proposal.

7.1.2 Disqualification

- (1) The Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member or a Proposal or reverse their decision to make an award (even if the award has already been made to the Preferred Proponent under this RFP) at any time prior to Commercial Close if,
 - (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3.
 - (b) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its Proposal or interview;
 - (c) the Proponent contravenes RFP Section 3.3.2 or 3.3.3;
 - (d) the Proponent fails to comply with Applicable Law;
 - (e) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;
 - (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates are a Restricted Person;
 - (g) the Proposal, including any officer's certificate or any form attached to the Proposal, contains false or misleading information or a misrepresentation;
 - (h) the Proponent or any Proponent Team Member fails to disclose any information (including in any officer's certificate or any other form attached to the Proposal in connection with this RFP) that would materially affect the Sponsors' evaluation the Proposal;

- (i) the Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.8 and the Proponent:
 - (i) does not receive a waiver from the Sponsors in accordance with RFP Section 3.8.1(6) or does not receive a consent in accordance with RFP Section 3.8.2(4), as applicable; or
 - (ii) fails to substitute the Person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.8.1(5);
- (j) in the 12 months prior to the Proposal Submission Deadline, the Sponsors became aware that the Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor, unless the Proponent has demonstrated to the satisfaction of the Sponsors that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (k) in the opinion of the Sponsors, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section 3.3.4;
- (l) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (m) the Proponent or any Proponent Team Member has been convicted of an offence in connection with, or any services rendered to the Sponsors or any Ministry, agency, Board or Commission of the Government of Ontario;
- (n) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (o) the Proponent, or any Proponent Team Member, has an economic or other interest or relationship that:
 - (i) is, or could reasonably be perceived to be, contrary to the objectives of the Program; or
 - (ii) could potentially compromise the Sponsors' reputation or integrity or the Sponsors' procurement process, so as to affect public confidence in that process,

whether or not such interest creates a Conflict of Interest.

SECTION 8. ALTERNATE PROPONENT**8.1 Identification of Alternate Proponent**

- (1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify an Alternate Proponent in accordance with RFP Section 6.5.7(1).
- (2) In the event that the Preferred Proponent is disqualified pursuant to RFP Section 7.1.2 or is unable, unwilling or otherwise fails to execute the Project Agreement, the Sponsors may invite the Alternate Proponent to become the Preferred Proponent.

8.2 Alternate Proponent Obligations

- (1) The Alternate Proponent shall provide access and shall promptly make available to the Sponsors and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsors from time to time in connection with the Sponsors' due diligence and validation investigations.

SECTION 9. PREFERRED PROPONENT**9.1 Identification of Preferred Proponent and the Letter of Credit**

- (1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify the Preferred Proponent in accordance with RFP Section 6.5.7(1).
- (2) No later than three (3) Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, the Preferred Proponent shall provide one or more irrevocable, unconditional standby letter(s) of credit (the "**Letter of Credit**") from a Permitted Letter of Credit Provider in the form attached as Schedule 6 to this RFP, in a total amount equal to \$5,000,000, to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5).
- (3) If the Preferred Proponent does not provide the Letter(s) of Credit to the Sponsors as required by this RFP Section 9.1 the Sponsors may, in their sole discretion, by written notice to the Preferred Proponent, cease all discussions with the Preferred Proponent, terminate any obligations of the Sponsors to the Preferred Proponent under any agreement or understanding relating to the Program, and, for greater certainty, the Preferred Proponent will not be entitled to or receive any payment or compensation of any kind relating to the Program.
- (4) Subject to the Sponsors' right to retain and apply the Letter(s) of Credit as liquidated damages as provided in this RFP, the Letter of Credit(s) shall be returned to the Preferred Proponent if the Sponsors give notice to the Proponent that they are cancelling or discontinuing the RFP Process, no later than ten (10) days after receipt by the Sponsors of a written demand for the Letter(s) of Credit by the Preferred Proponent.

- (5) In the event that a Proponent is selected as the Preferred Proponent for the Program and does not comply with the obligations set out in this RFP or the Preferred Proponent otherwise fails to execute the Project Agreement with respect to the Program within one hundred sixty-five (165) days after the Proposal Submission Deadline, the Sponsors shall be entitled to draw the entire amount of such Proponent's Letter(s) of Credit and retain and apply the proceeds thereof as liquidated damages. The Proponent agrees that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the Sponsors will suffer as a result of the Proponent failing to comply with its obligations under this RFP and/or failing to execute the Project Agreement by the prescribed time. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the Sponsors as a result of the Proponent failing to comply with its obligations under this RFP and/or failing to execute the Project Agreement by the prescribed time. The Proponent agrees that such liquidated damages shall be payable whether or not the Sponsors incur or mitigate their damages, and that the Sponsors shall not have any obligation to mitigate any such damages.
- (6) The Sponsors shall not be required to give any prior written notice to the Preferred Proponent of their intention to draw on the Letter(s) of Credit. If the Preferred Proponent notifies the Contact Person in writing that the Preferred Proponent disputes the Sponsors' right to draw on the Letter(s) of Credit and to retain the proceeds as liquidated damages, then the Sponsors shall nonetheless be entitled to draw on the Letter(s) of Credit, but to the extent it is finally determined in a non-appealable judgment of a court of competent jurisdiction that the Sponsors were not entitled to draw on the Letter of Credit and to retain the proceeds as liquidated damages, the Sponsors will be liable to repay the amount wrongfully drawn, together with interest charges at the rate prescribed on that amount. If the Preferred Proponent fails to renew or extend the Letter(s) of Credit at least thirty (30) days prior to its expiry date, the Sponsors may, at any time without notice to the Preferred Proponent, draw on the Letter(s) of Credit and hold the proceeds thereof in the same manner and for the same purposes as the Letter(s) of Credit.

9.2 Preferred Proponent Obligations

- (1) The Preferred Proponent shall,
- (a) achieve Commercial Close,
 - (i) prior to the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed and the Sponsors have given their consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable) for such Proposal,
- based on the Project Agreement in substantially the same form and content as attached hereto as Schedule 4; and

- (b) execute the Project Agreement, subject only to revision in respect of the following:
- (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require the insertion or addition of information relating to the Preferred Proponent's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement;
 - (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Project Agreement (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Project Agreement; and
 - (iv) changes, additions and modifications to those parts of the Project Agreement which are indicated in the Project Agreement as being subject to completion or finalization,
- provided, that, in each case the changes, additions or modifications identified in RFP Section 9.2(1)(b) are consistent with the principles set out in the Project Agreement, are otherwise acceptable to the Sponsors, acting reasonably, and are consistent with RFP Section 9.2(3); and
- (c) concurrently with executing the Project Agreement, provide a guarantee in the form attached hereto as Schedule 5 from each entity put forward by the Preferred Proponent to demonstrate financial capacity and/or technical capability in such Proponent's Prequalification Submission that does not enter into the Project Agreement.
- (2) The Preferred Proponent shall provide access and shall promptly make available to the Sponsors and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsors from time to time in connection with the Sponsors' due diligence investigations. The Preferred Proponent shall provide to the Sponsors, in a timely fashion, final draft versions of all documents required to be delivered by the Preferred Proponent in accordance with the Project Agreement, together with such other documentation as Infrastructure Ontario may reasonably request from time to time.
- (3) The Preferred Proponent acknowledges and agrees that:
- (a) further to RFP Section 5.4(1), the Sponsors, in their sole discretion, may incorporate certain parts of the Successful Proponent's Proposal into the Project Agreement as ISP Proposal Extracts; and

- (b) save and except for any ISP Proposal Extracts, on Commercial Close, the RFP Documents and its Proposal will be superseded entirely by the Project Agreement and rendered null and void in accordance with Section 1.3 of the Project Agreement.

9.3 The Sponsors Authorization and Approvals

- (1) The Preferred Proponent acknowledges and agrees that the entering into of the Project Agreement by the Signing Parties is conditional on and subject to the Signing Parties obtaining any necessary authorizations and approvals required in connection with the Program, including, for certainty, the approval of any relevant government authority.

SECTION 10. GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

10.1 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion:
 - (a) reject any or all of the Proposals;
 - (b) accept any Proposal;
 - (c) negotiate any aspect of any Proposal (including the Bid Price) and the Project Agreement and/or accept new or additional information from any or all Proponents without offering other Proponents an opportunity to amend their Proposals or to provide new or additional information;
 - (d) discuss and agree to changes, amendments or modifications to the Proposal of a Proponent without offering other Proponents an opportunity to change, amend or modify their Proposals;
 - (e) decline to evaluate any Proposal that, in its sole discretion, is incomplete, obscure or does not contain sufficient information to carry out a reasonable evaluation;
 - (f) if only one or two Proposals are received, elect to accept or reject such Proposals or enter into negotiations with each Proponent;
 - (g) elect to discontinue the RFP Process in whole or in part at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before Commercial Close;
 - (h) disqualify, remove or require the addition of a Proponent Team Member of a Proponent;
 - (i) waive any irregularity, non-conformance or non-compliance in or by any Proposals;

- (j) alter the Timetable, the RFP Process or any other aspect of this RFP;
 - (k) verify with any Proponent or with a third party any information in a Proposal; and
 - (l) cancel the RFP Process in whole or in part and subsequently advertise or call for new submissions for the same or different subject matter of the RFP Documents with the same or different participants.
- (2) The Proposals of each Proponent shall remain valid and irrevocable until the expiration of the Proposal Validity Period for such Proposal or until Commercial Close, whichever occurs first, in accordance with RFP Section 5.4(1).
- (3) Each Proponent Team Member of each Proponent is required to provide a Proponent Team Member Declaration. Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion, require at any time, including any time after a Proponent has submitted its Proposal, that any Proponent Team Member provide or resubmit a Proponent Team Member Declaration.
- (4) Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion:
- (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures with respect to bidding practices, ethical behaviour or anti-racism, anti-discrimination, anti-harassment (including assault and sexual harassment) and anti-hate speech practices of the Proponents and Proponent Team Members; and
 - (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the Sponsors with: (i) copies of its internal policies with respect to anti-racism, anti-discrimination, anti-harassment (including assault and sexual harassment) and anti-hate speech practices; (ii) evidence of its internal expectations practices and processes designed to confront, prevent and address workplace-based racism, harassment, discrimination and hate speech; and (iii) copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.
- (5) Further to RFP Sections 10.1(2) and 10.1(4), and in the event that any Proponent and/or Proponent Team Member:
- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to RFP Section 10.1(2) or 10.1(4); or

- (b) complies with Sponsors' requirement as prescribed in accordance with RFP Section 10.1(2) or 10.1(4), but the Sponsors determine that any Proponent and/or Proponent Team Member has or may have engaged in inappropriate bidding practices or unethical behaviour,

the Sponsors shall have the right, at any time and in their sole discretion to reject and not consider a Proposal from a Proponent to require the Proponent to remove and/or replace any Proponent Team Member pursuant to RFP Section 3.5 or to otherwise elect not to proceed further in the procurement process with such Proponent.

10.2 Special Circumstances

- (1) If the Sponsors determine that all of the Proposals submitted are non-compliant in accordance with RFP Section 6.3, the Sponsors may, in their sole discretion:
 - (a) take any action in accordance with RFP Section 10.1; or
 - (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their Proposals for re-submission, without a change in their Bid Price; or
 - (c) enter into negotiations with any one or more of the Proponents to attempt to finalize an agreement.
- (2) If the Sponsors receive,
 - (a) one Proposal and that Proposal is compliant; or
 - (b) more than one Proposal, but only one compliant Proposal,the Sponsors may, in their sole discretion take any action in accordance with RFP Section 10.1(1).
- (3) The Sponsors, in their sole discretion, may waive a Material Deviation in a Proposal and, therefore, waive a material failure to comply with the requirements of the RFP Documents. The Sponsors may, in their sole discretion, decline to disqualify a non-compliant Proposal.
- (4) The Sponsors may, in their sole discretion, and at any time prior to the Proposal Submission Deadline, increase the number of Prequalified Parties participating in the RFP Process. If at any time prior to the Proposal Submission Deadline, a Proponent is disqualified or withdraws from the RFP Process, or otherwise becomes no longer qualified to participate in the RFP Process, the Sponsors may, in their sole discretion, invite one or more Applicants to participate in the RFP Process based on their ranking in the RFQ Process, even if such Applicants were not Prequalified Parties in the first instance. Any such Applicant that accepts the Sponsors' invitation shall become a Prequalified Party and a Proponent under this RFP.

10.3 Sponsors' Liability

10.3.1 General

- (1) Notwithstanding any other provision of this RFP, this RFP is not a tender and is not an offer to enter into either a bidding contract (often referred to as "**Contract A**") or a contract to carry out the Program (often referred to as "**Contract B**"). Except where expressly stated otherwise in this RFP, including as provided in RFP Section 9.1, neither this RFP nor the submission, evaluation, ranking or selection process provided for under this RFP, any decision or determination of, or the exercise of any right or remedy by the Sponsors or any minister, employee, agent servant, legislator or official thereof pursuant to or in conjunction with this RFP shall create any legal or contractual rights, commitments, duties, liability or obligations whatsoever on the Proponents, the Sponsors, the Government of Ontario or any Ministry of the Government of Ontario. Except where expressly stated otherwise in this RFP, including as provided in RFP Section 9.1, no legal relationship or obligation of any kind whatsoever shall be created between any Proponent, any Proponent Team Member, the Sponsors, the Government of Ontario or any Ministry of the Government of Ontario until such time as the Proponent is identified as the Preferred Proponent and executes the Project Agreement.
- (2) Without limiting RFP Section 10.3.1(1), none of the Sponsors and the Government of Ontario shall be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Advisor to the Proponent or any person connected with any one of them, as a result of any action taken by the Sponsors in accordance with RFP Sections 10.1 or 10.2.
- (3) Each Proponent and Proponent Team member waives any rights it may have to make any claim against the Sponsors or any ministers (including, without limitation, the Minister of Infrastructure), directors, officers, agents, appointees and employees thereof pursuant to or in conjunction with this RFP or the Program whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors or any ministers (including, without limitation, the Minister of Infrastructure), directors, officers, agents, appointees and employees thereof.

10.3.2 Limit on Liability

- (1) Notwithstanding that in accordance with RFP Section 10.3.1 this RFP is not a tender and is not intended to create Contract A. Proponents, Proponent Team Members and all other entities participating in the RFP Process agree that if the Sponsors, the Government of Ontario or any Ministry of the Government of Ontario is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of the RFP Process, the total liability of the Sponsors, the Government of Ontario and any Ministry of the Government of Ontario to any Proponent, Proponent Team Member or any other entity participating in the RFP Process, and the aggregate amount of damages recoverable against the Sponsors, the

Government of Ontario or any Ministry of the Government of Ontario for any matter relating to or arising from any act or omission by any one or more of them, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors, the Government of Ontario or any Ministry of the Government of Ontario, shall be no greater than the Proponent's cost of preparing its Proposal or \$10,000, whichever is less.

10.4 Applicable Law and Attornment

- (1) This RFP shall be governed and construed in accordance with Applicable Law.
- (2) Each Proponent agrees that,
 - (a) any action or proceeding relating to the RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to the RFP Process on any jurisdictional basis, including *forum non conveniens*; and
 - (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 10.4.

10.5 Licenses, Permits, etc.

- (1) If a Proponent is required by Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal or in the Project Agreement, neither acceptance of the Proposal nor execution of the Project Agreement by the Sponsors shall be considered to be approval by the Sponsors of carrying on such activity without the requisite licence, permit, consent or authorization.

10.6 Power of Legislative Assembly

- (1) Proponents are advised that no provision of the RFP Documents (including a provision stating the intention of the Sponsors) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

10.7 Legal Counsel

- (1) By submitting any part of a Proposal, each Proponent and Proponent Team Member expressly consents to Torys LLP representing and continuing to represent the Sponsors for all matters in relation to this RFP and the Program, including any

matter that is adverse to the Proponent or Proponent Team Member, despite any information of the Proponent or Proponent Team Member and any solicitor-client relationship that the Proponent or Proponent Team Member may have had, or may have, with Torys LLP in relation to matters other than this RFP and the Program. This RFP Section 10.7 is not intended to waive any of the Proponent's or Proponent Team Member's rights of confidentiality or solicitor-client privilege. The Sponsors reserve the right at any time to waive any provision of this RFP Section 10.7.

10.8 Acknowledgment re Potential Competition Within Geographic Area

- (1) By submitting any part of a Proposal, each Proponent and each Proponent Team Member expressly acknowledges and accepts that:
 - (a) the Program is not an exclusive program or project in relation to any geographic area covered or served by the Satellite Broadband System and other internet service providers may choose to build broadband infrastructure within such geographic area under other government programs (with or without subsidy) or otherwise; and
 - (b) any such competition from other internet service providers is the sole risk of the Proponent and its Proponent Team Members.

SECTION 11. NOTIFICATION AND DEBRIEFING

- (1) Shortly following the conclusion of Step 7 of the evaluation process, the Sponsors shall notify the Preferred Proponent and the Alternate Proponent of their status as such.
- (2) Any time after the Successful Proponent has been identified, the Sponsors will formally notify all other Proponents who were not successful in the RFP Process that they have not been selected. Notwithstanding such notification, the Alternate Proponent's Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Commercial Close, in accordance with RFP Section 5.4.
- (3) Any time after Commercial Close, the Sponsors may, in their sole discretion, hold debriefing sessions with any unsuccessful Proponent, at the request of the unsuccessful Proponent. Any information provided by the Sponsors in good faith during a debriefing shall not be used against the Sponsors or their Advisors in any way whatsoever, including in any legal action.

SECTION 12. DEFINITIONS

12.1 General

- (1) Unless otherwise defined in this RFP Section 12, capitalized terms and expressions used in this RFP have the meaning given to them in the Project

Agreement. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

- (2) Any reference in this RFP to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.
- (3) All references in this RFP to the Sponsors' or Infrastructure Ontario's "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

12.2 RFP Definitions

Whenever used in the RFP:

- (1) **"Addendum"** means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.6;
- (2) **"Advisor"** means any Person or firm retained to provide professional advice to any one of the Sponsors, a Proponent or a Proponent Team Member, as applicable;
- (3) **"Affiliate"** means an **"affiliate"** as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (4) **"Alternate Proponent"** is defined in RFP Section 1.1(3);
- (5) **"Applicable Law"** means:
 - (a) any federal, provincial or municipal statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgement of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

in each case, in force in the Province of Ontario or otherwise binding on a Proponent, any Proponent Team Member or the Sponsors;

- (6) **"Applicant"** is defined in Section 1.1(2) of the RFQ;
- (7) **"Authority Requirement"** means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority;
- (8) **"Background Information"** means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (9) **"Bid Price"** is defined in Schedule 3 Part C to this RFP;

- (10) **“Bid Price Form”** is defined in Schedule 3 Part C to this RFP;
- (11) **“Business Day”** means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the city of Toronto, Ontario;
- (12) **“CFO Certificate Form”** is defined in Schedule 3 Part C to this RFP;
- (13) **“Change in Control”** means a change in the identity of the individual or legal entity or group of individuals or legal entities acting in concert that owns, directly or indirectly, more than fifty percent (50%) or more of the outstanding voting shares of an entity or that otherwise exercises direct or indirect power or control over the decisions, management, actions or policies of such entity;
- (14) **“Client”** is defined in RFP Section 1.1(1);
- (15) **“Commercial Close”** means the date the Project Agreement is signed by the Preferred Proponent and the Signing Parties;
- (16) **“Commercial Close Target Date”** means the date set out as the Commercial Close Target Date in the Timetable;
- (17) **“Commercially Confidential Meetings”** is defined in RFP Section 3.4.2(1);
- (18) **“Commercially Confidential RFIs”** is defined in RFP Section 3.2.2(1)(a)(ii);
- (19) **“Confidential Information”** is defined in RFP Section 3.7.3(1);
- (20) **“Conflict of Interest”** is defined in RFP Section 3.8.1(7);
- (21) **“Conflicts of Interest Screening List”** is defined in Schedule 3 Part A to this RFP;
- (22) **“Consultation Session”** is defined in Schedule 2 to this RFP;
- (23) **“Contact Person”** is defined in RFP Section 3.2.1;
- (24) **“COR”** means the certification issued by IHSA to a Person confirming that the health and safety management systems of such Person comply with the terms, provisions and conditions of the COR Program;
- (25) **“COR Certification”** means, in respect of a Person, receipt by such Person of its COR and Letter of Good Standing;
- (26) **“COR Program”** means the national safety program known as “The Certificate of Recognition (CORTM)”, being a safety program that enables Persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian

Federation of Construction Safety Associations, or such other national safety program approved by Sponsors;

- (27) **“Draft Indigenous Engagement and Participation Plan”** means the Proponent’s proposed Indigenous engagement and participation plan submitted in response to the applicable requirements set out in Schedule 3 Part B to this RFP, comprising:
- (a) Section A – Engagement of Program Indigenous Communities: A comprehensive plan, and associated deliverables, to meaningfully engage the Program Indigenous Communities, which will involve working closely with the Sponsors and the Sponsors’ Indigenous Engagement Advisor;
 - (b) Section B – Supporting Third-Party Program Deployment in Program Indigenous Communities: Strategies and approaches, and associated deliverables, to accommodate third parties that may be contracted to support Program deployment in the Program Indigenous Communities (e.g., third-party organizations that can support equipment installations in remote and fly-in communities); and
 - (c) Section C – Socio-Economic Development Opportunities for Program Indigenous Communities: Initiatives that will provide Socio-Economic Development Opportunities and associated benefits to the Program Indigenous Communities (e.g., through training and skills development, employment, partnership and subcontracting opportunities, and other measures and innovative approaches).
- (28) **“EBS”** is defined in RFP Section 5.1(1);
- (29) **“Eligible Premises”** is defined in Section 1.1 of the Project Agreement;
- (30) **“Eligible Premises Criteria”** is defined in Section 1.1 of the Project Agreement;
- (31) **“Evaluation Committee”** is defined in RFP Section 6.1;
- (32) **“Fairness Advisor/Monitor”** is defined in the RFP Data Sheet;
- (33) **“Final Proposal Score”** is defined in RFP Section 6.5.6(3);
- (34) **“Financial Score”** is defined in RFP Section 6.5.5(3);
- (35) **“Financial Submission”** is defined in RFP Section 4.1(2)(c);
- (36) **“Financial Submission Category”** is defined in Schedule 3 to this RFP;
- (37) **“FIPPA”** is defined in RFP Section 3.7.1(1);
- (38) **“General Proposal Submission Guidelines”** is defined in Schedule 3 to this RFP;
- (39) **“General RFIs”** is defined in RFP Section 3.2.2(1)(a)(i);

- (40) **“Government of Ontario”** means His Majesty the King in right of the Province of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;
- (41) **“Governmental Authority”** means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Sponsors, to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction, and, for clarity, includes the Government of Ontario;
- (42) **“Identified Proponent Parties”** is defined in RFP Section 3.5;
- (43) **“IHSA”** means the Infrastructure Health and Safety Association;
- (44) **“Impacted Participant”** is defined in RFP Section 3.5(10);
- (45) **“includes”** and **“including”** means **“includes without limitation”** and **“including without limitation”** respectively;
- (46) **“Indigenous Business”** is defined in Schedule 3 Part B to this RFP;
- (47) **“Indigenous Engagement and Participation Plan”** is defined in Schedule 3 Part B to this RFP;
- (48) **“Indigenous Participation Cash Allowance”** is defined in Schedule B to the Project Agreement;
- (49) **“Ineligible Person’s Affiliate”** is defined in RFP Section 3.8.2(1);
- (50) **“Ineligible Persons”** is defined in RFP Section 3.8.2(1);
- (51) **“Infrastructure Ontario”** is defined in RFP Section 1.1(1);
- (52) **“Installer”** means any entity or entities that would be responsible for the installation services required for the installation, connection and activation of the ready for service equipment for the Program;
- (53) **“Investment Canada Act”** means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time;
- (54) **“IO”** is defined in RFP Section 1.1(1);
- (55) **“ISO”** means the International Organization of Standardization;
- (56) **“ISO 45001”** means the international standard that specifies requirements for an occupational health and safety management systems developed by the ISO;

- (57) **“ISO 45001 Accreditation”** means, in respect of a Person, such Person having received certification in respect of its health and safety management systems that such systems comply with the requirements of ISO 45001;
- (58) **“ISP”** means the entity formed, or that will be formed, to enter into the Project Agreement;
- (59) **“ISP Proposal Extracts”** is defined in Schedule L to the Project Agreement;
- (60) **“Joint Venture”** means an association of two or more Proponent Team Members engaged in a limited purpose business enterprise for profit without actual partnership or incorporation;
- (61) **“Key Individuals/Advisors”** means the Persons identified in the Proponent’s Prequalification Submission as the Proponent’s team lead, technical lead/advisor and Proponent Indigenous Engagement Advisor;
- (62) **“KPIs”** is defined in Schedule B to the Project Agreement;
- (63) **“Latitudinal Band”** is defined in Section 1.1 of the Project Agreement;
- (64) **“Letter of Credit”** is defined in RFP Section 9.1(2);
- (65) **“Letter of Good Standing”** means the document issued by IHSA to a Person confirming that the internal maintenance audit performed by such Person regarding its health and safety management systems has been approved by IHSA, and that such Person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program;
- (66) **“LTI Listing”** means, in respect of a Person, a listing of any construction accidents incurred that have caused lost time injuries (as such term is used by the WSIB) for the previous 12-month period;
- (67) **“Material Deviation”** is defined in RFP Section 6.3(1);
- (68) **“MERX”** is defined in RFP Section 2.4(1);
- (69) **“Ministry”** is defined in the RFP Data Sheet;
- (70) **“MOI”** means the Ministry of Infrastructure;
- (71) **“OILC”** is defined in RFP Section 1.1(1);
- (72) **“One Window”** is defined in RFP Section 2.4(2);
- (73) **“Permitted Letter of Credit Provider”** a Canadian chartered bank listed on Schedule I or Schedule II to the Bank Act (Canada), or any other regulated provider approved by the Sponsors in their sole discretion;

- (74) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative;
- (75) **“Preferred Proponent”** is defined in RFP Section 1.1(3);
- (76) **“Premises Equipment Cost Subsidy Amount”** is defined in Schedule 3 Part C to this RFP;
- (77) **“Premises Installation Cost Subsidy Amount”** is defined in Schedule 3 Part C to this RFP;
- (78) **“Prequalification Submission”** is defined in RFP Section 1.2(1);
- (79) **“Prequalified Parties”** is defined in RFP Section 1.2(1);
- (80) **“Prime Team Member”** means any entity that is a member of a Proponent’s team that is (or is an Affiliate of) an entity that is registered as a telecommunications service provider with the Canadian Radio-television and Telecommunications Commission;
- (81) **“Program”** means the provision of high speed internet connectivity in all latitudinal bands via satellites and associated infrastructure on the terms and conditions set out in the Project Agreement;
- (82) **“Program Indigenous Communities”** is defined in Schedule 3 Part B to this RFP;
- (83) **“Prohibited Act”** means:
- (a) offering, giving or agreeing to give to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to a Proponent becoming the Preferred Proponent, the Alternate Proponent or the Successful Proponent; or
 - (ii) for showing or not showing favour or disfavour to any Person in relation to a Proponent’s Proposal;
- provided that this definition shall not apply to a Proponent or Proponent Team Member (or anyone employed by or acting on their behalf) providing consideration to the Sponsors or any public body in the ordinary course;
- (b) entering into any other agreement with the Sponsors or any public body in connection with the Program if a commission or a fee has been paid or has been agreed to be paid by a Proponent or any Proponent Team Members,

or any of their Affiliates, or on its behalf or to its knowledge, to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Sponsors, provided that this definition shall not apply to a fee or commission paid by the Proponent or any Proponent Team Member or any of their Affiliates (or anyone employed by or acting on their behalf) to the Sponsors or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this section;

- (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to the RFP Process; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;
- (84) **“Project Agreement”** are those documents listed as the **“Project Agreement”** in the RFP Data Sheet;
- (85) **“Proponent”** is defined in RFP Section 1.1(3);
- (86) **“Proponent Indigenous Engagement Advisor”** means the Person engaged by the Proponent to perform the role of the Indigenous engagement advisor, as described in the Project Agreement;
- (87) **“Proponent Representative”** is defined in RFP Section 1.2(1);
- (88) **“Proponent Team Member Declaration”** is defined in Schedule 3 Part A to this RFP;
- (89) **“Proponent Team Members”** means all members of the Proponent team that were identified in the RFQ Process and were prequalified as a Proponent team to submit a Proposal in the RFP Process, including a Prime Team Member;
- (90) **“Proponents Meeting”** is defined in RFP Section 3.4.1(1);
- (91) **“Proposal”** is defined in RFP Section 1.1(3);
- (92) **“Proposal Information”** is defined in RFP Section 3.7.4(6);
- (93) **“Proposal Information Licence”** is defined in RFP Section 3.7.4(4);
- (94) **“Proposal Submission”** means the submission of a Proponent pursuant to RFP Section 4;
- (95) **“Proposal Submission Deadline”** is defined in RFP Section 3.1(1);
- (96) **“Proposal Validity Period”** is defined in RFP Section 5.4(1);

- (97) **“Proposed Change in Identified Proponent Party”** is defined in RFP Section 3.5(3);
- (98) **“Reserved Premises Capacity”** means the capacity to be reserved by the Proponent on the Satellite Broadband System for 15,000 Eligible Premises;
- (99) **“Restricted Person”** means any Person who, or any member of a group of Persons acting together, any one of which:
- (a) (i) subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such Person from undertaking the Program in whole or in part or in a manner which the Sponsors consider unacceptable in their sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by the Sponsors in their sole discretion);
 - (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such individual received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (e) in the case of a Person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such Person is a “Restricted Person” is made hereunder, whether or not such Person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five

- years prior to the date at which the consideration of whether such Person is a “Restricted Person” is made hereunder;
- (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (g) is subject to a material claim of the Sponsors under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such Person is a “Restricted Person” is made hereunder, and which, (in respect of any such pending claim, if it were to be successful) would, in the Sponsors view, in either case, be reasonably likely materially to affect the Proponent’s ability to perform its obligations under the Project Agreement, if it were to become the Preferred Proponent under the RFP Process; or
 - (h) has a material interest in the production of tobacco products;
- (100) “**RFI**” is defined in RFP Section 2.2(2);
 - (101) “**RFP**” is defined in RFP Section 1.1(1);
 - (102) “**RFP Data Sheet**” means Schedule 1 to this RFP;
 - (103) “**RFP Documents**” is defined in RFP Section 2.1;
 - (104) “**RFP Process**” is defined in RFP Section 1.1(4);
 - (105) “**RFQ**” is defined in RFP Section 1.2(1);
 - (106) “**RFQ Process**” is defined in RFP Section 1.2(1);
 - (107) “**RFQ Stage**” is defined in RFP Section 1.3(2)(a);
 - (108) “**Satellite Broadband System**” means the satellite network and associated infrastructure which provides broadband services to the Eligible Premises in accordance with the terms of the Project Agreement;
 - (109) “**Signing Parties**” is defined in RFP Section 1.1(7);
 - (110) “**Socio-Economic Development Opportunities**” is defined in Schedule 3 Part B to this RFP;
 - (111) “**Sponsors**” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
 - (112) “**Sponsors’ Indigenous Engagement Advisor**” is defined in Schedule 3 Part B to this RFP;

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- (113) “**Successful Proponent**” is defined in RFP Section 1.1(3);
- (114) “**Technical Conformance Element**” is defined in Schedule 3 to this RFP;
- (115) “**Technical Evaluation Criteria**” is defined in Schedule 3 to this RFP;
- (116) “**Technical Score**” is defined in RFP Section 6.5.3(3);
- (117) “**Technical Submission**” is defined in RFP Section 4.1(2)(b);
- (118) “**Technical Submission Categories**” means, collectively, the Technical Conformance Elements and the Technical Evaluation Criteria;
- (119) “**Timetable**” is defined in RFP Section 3.1(1);
- (120) “**Total Capacity Reservation Payment**” is defined in Schedule 3 Part C to this RFP;
- (121) “**WISR**” means a current workplace injury summary report issued by WSIB;
- (122) “**WSIB**” means the Ontario Workplace Safety and Insurance Board; and
- (123) “**WSIB Clearance Certificate**” means the clearance certificate issued by WSIB.