



Request for Proposals
for
ACCELERATED HIGH SPEED INTERNET PROGRAM

RFP No. 21-212

Date Issued: November 30, 2021

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

- (1) This Request for Proposals (“**RFP**”) is issued by the Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (“**Infrastructure Ontario**”, also known as “**OILC**” and “**IO**”) in conjunction with *Her Majesty the Queen in right of Ontario*, as represented by the Minister of Infrastructure (referred to as the “**Client**”). Infrastructure Ontario and the Client are collectively referred to as the “**Sponsors**” for the purposes of this RFP.
- (2) In this RFP, Qualified Participants that submit documents in response to this RFP and participate in an Auction and/or submit an Alternative Submission as described in this RFP are referred to as “**Proponents**” and their submissions (including Pre-Auction Submissions, Bid Prices, Total Premises Coverages, Wired Premises Coverages and Post-Auction Validation 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 a Service Area pursuant to Schedule 3 to this RFP is referred to as the “**Preferred Proponent**” for that Service Area. The entity that satisfies the Post-Auction Validation Submission requirements and is selected by the Sponsors to enter into the Project Agreement in respect of a Service Area is referred to as the “**Successful Proponent**” for that Service Area. For the purposes of convenience, in this RFP the expression “**Proponents**” also includes Qualified Participants prior to the submission of their Proposals.
- (3) The procurement process to select a Successful Proponent for each Service Area shall commence with the issuance of this RFP and shall terminate with respect to a Service Area on Commercial Close for such Service Area or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) for all Proposals in respect of such Service Area, whichever is first (the “**RFP Process**”).
- (4) 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.
- (5) Detailed descriptions of the projects that are the subject of this RFP (the “**Projects**”) are contained in the documentation and information available in the Data Room. The Projects form part of the Province of Ontario’s Accelerated High Speed Internet Program (the “**AHSIP**”). A brief description of the AHSIP is set out in the RFP Data Sheet.
- (6) While Infrastructure Ontario will manage the RFP Process in respect of each Project, the Successful Proponent for each Service Area, 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 Qualified Participants and Proponent Representatives

- (1) Subject to RFP Section 3.5, only those parties that were prequalified through the AHSIP 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 Schedule 7 to this RFP (“**Qualified Participants**”). The prequalification forms and documents submitted by each of the Qualified Participants in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Qualified Participant’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 to receive information and notices on behalf of the Proponent (the “**Proponent Representative**”). Each Proponent is solely responsible to ensure 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 Project Procurement

- (1) The Sponsors will carry out the procurement of the Projects in accordance with the following stages:
 - (a) Stage 1 – Request for Qualifications Stage

The request for qualifications stage (“**RFQ Stage**”) preceded the RFP Process and identified the Qualified Participants.

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

The RFP procurement process is the competitive procurement process described in detail in this RFP. The RFP procurement process consists of four phases: (1) a pre-auction submission phase, (2) a live auction and alternative submission phase (3) a post-auction due diligence and validation phase and (4) a Commercial Close phase. The RFP procurement process begins with the issuance of this RFP to Qualified Participants and ends upon Project Agreement execution with Successful Proponents.

(i) Phase 1 – Pre-Auction Submission

Proponents will make a Pre-Auction Submission, in accordance with the requirements set out in Schedule 2 to this RFP. The Pre-Auction Submission will include the list of Service Area(s) the Proponent intends to bid on either in the Auction or through an Alternative Submission and certain other submissions described in Schedule 2 to this RFP. Proponents will not be invited to participate in the Auction or make an Alternative Submission in respect of any Service Area for which the Proponent has not submitted the information required under Schedule 2 to this RFP on or before the Pre-Auction Submission Deadline.

(ii) Phase 2 – Live Auction and Alternative Submissions

The Sponsors will conduct an Auction for each Service Area as described in Schedule 3 to this RFP. Eligible Proponents may participate in the Auction or make an Alternative Submission for the relevant Service Area depending on their respective Process Declarations, as described in Schedules 2 and 3 to this RFP.

(iii) Phase 3 – Post-Auction Validation Submission

Preferred Proponents and Alternate Proponents will make a Post-Auction Validation Submission, in accordance with the requirements set out in Schedule 4 to this RFP. The Post-Auction Validation Submission will include additional technical details to enable the Sponsors to conduct due diligence on and validate the viability of each Preferred Proponent's Proposal and each Alternate Proponent's Proposal with reference to the Project Agreement requirements.

(iv) Phase 4 – Commercial Close

Successful Proponents will enter into the Project Agreement with the Signing Parties.

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 THE DATA ROOM

2.1 RFP Documents

- (1) The RFP Documents (the "**RFP Documents**") are:

- (a) this RFP;
- (b) Schedule 1 – RFP Data Sheet;
- (c) Schedule 2 – Pre-Auction Submission Requirements and Submission Forms, consisting of:
 - (i) Part A – Financial Document Requirements;
 - (ii) Part B – Service Area and Process Declaration Requirements;
 - (iii) Part C – Proponent Team Member Submission Requirements;
 - (iv) Part D – Form of Letter of Credit;
 - (v) Part E – Proponent Team Member Declaration Submission Form; and
 - (vi) Part F – Conflicts of Interest Screening List Submission Form;
- (d) Schedule 3 – Auction Requirements, Alternative Submission Requirements and Scoring Process, consisting of:
 - (i) Part A – Auction Requirements, Alternative Submission Requirements and Scoring Process for Wired Service Areas; and
 - (ii) Part B – Auction Requirements, Alternative Submission Requirements and Scoring Process for Wireless Service Areas;
- (e) Schedule 4 – Post-Auction Submission Requirements, Submission Forms and Validation Criteria, consisting of:
 - (i) Part A – Solution Overview Requirements;
 - (ii) Part B – Solution Detail Requirements;
 - (iii) Part C – Network Segment Maps Requirements;
 - (iv) Part D – Construction Readiness Requirements;
 - (v) Part E – Project Budget Requirements;
 - (vi) Part F – Key Terms; and
 - (vii) Part G – Submission Templates;

- (f) Schedule 5 – Form of Project Agreement (including all related Schedules appendices and attachments) as listed in the RFP Data Sheet;
 - (g) Schedule 6 – Form of Guarantee;
 - (h) Schedule 7 – Qualified Participants; and
 - (i) 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 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 this 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 Projects 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 contained in the Data Room; and
 - (b) any other version of the same RFP Document (whether in electronic or hard copy),
- the Sponsors’ electronic version as contained in the Data Room shall govern.

- (4) If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are downloaded by a Proponent, the documents contained in the Data Room shall govern.
- (5) If there is any conflict or inconsistency between two versions of the same RFP Document contained in the Data Room, 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 placed in the Data Room by Infrastructure Ontario.

2.3 Distribution of Documents to Proponents

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

2.4 Data Room and One Window

- (1) The Sponsors have established on Coupa an electronic data room (the “**Data Room**”) for:
 - (a) the distribution of RFP Documents and Addenda (including “black-lined” RFP Documents revised by Addenda);
 - (b) the distribution of training materials for Proponents to participate in the Auctions, including the ability to participate in mock Auctions, and make Alternative Submissions (the “**Auction Training Materials**”);
 - (c) the provision of Service Area Maps;
 - (d) the provision of various types of other background information for the Proponents’ review (together with the Auction Training Materials and the Service Area Maps, the “**Background Information**”); and
 - (e) the receipt of RFIs from Proponents and the posting of responses to RFIs.

- (2) In addition to the Data Room, the Sponsors have established One Window, a geographic information system at <https://www.onewindow.ca> (“One Window”), to provide Service Area segmentations, datasets and associated reserve pricing. Any documents and information available on One Window constitute Background Information and do not form part of the RFP Documents.
- (3) The Data Room and One Window will be accessible as of the date of this RFP. The Sponsors may add, delete or amend documents and information in the Data Room and/or One Window at any time.
- (4) Each Proponent is solely responsible to ensure that it:
 - (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to the Data Room and One Window and receipt of a Data Room password and a One Window password;
 - (b) has the appropriate software which allows the Proponent to access and download RFP Documents, the Auction Training Materials, the Service Area Maps and other Background Information from the Data Room and One Window, as applicable; and
 - (c) checks the Data Room and One Window frequently for the addition, deletion or amendment of RFP Documents or 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 or Background Information and responses to RFIs.

2.5 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 all existing conditions affecting the Project(s) or the Project Agreement. The Proponents’ and Proponent Team Members’ obligations set out in this RFP Section 2.5 apply irrespective of any Background Information in the Data Room or One Window or information contained in the RFP Documents or in responses to RFIs.
- (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 in the Data Room 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) 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 Qualified Participants, 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 Pre-Auction Submissions (the "**Pre-Auction Submission Deadline**"), the dates of the Auctions, the deadline for the Post-Auction Validation Submissions (the "**Post-Auction Validation Submission Deadline**"), and the general timetable for the RFP Process (the "**Timetable**") are 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 Pre-Auction Submission Deadline for events that are to occur prior to or on the Pre-Auction Submission Deadline, including the Pre-Auction Submission Deadline itself;
 - (b) at any time prior to each Auction for events that are to occur prior to or on the date of such Auction, including the date of the Auction itself;
 - (c) at any time prior to the Post-Auction Validation Submission Deadline for events that are to occur prior to or on the Post-Auction Validation Submission Deadline, including the Post-Auction Validation Submission Deadline itself; and
 - (d) at any time in the RFP Process for events that are to occur after the Post-Auction Validation Submission Deadline.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

- (1) Except as set out in RFP Sections 3.2.4 and 3.4.2, the Proponents shall submit all questions and other communications regarding the RFP Documents, the Auction Training Materials, the Service Area Maps, 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 in the Data Room.

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 Coupa 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, the Auction Training Materials, the Service Area Maps or 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 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, Auction Training Materials, Service Area Maps, other Background Information, responses to RFIs, any documents placed in the Data Room 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.

3.2.4 Service Area Comments

- (1) Proponents have the opportunity to propose amendments to the boundaries of any Service Area by submitting a redline showing the proposed changes to the applicable Service Area Map(s) through the "ISP Auction Lot Feedback" Tab in One Window on or before the Service Area Proposal Deadline. The Sponsors are not obligated to respond to any proposal made a Proponent and will decide whether to amend the boundaries of any Service Area in the Sponsors' sole discretion. If the Sponsors accept a proposed amendment to the boundaries of any Service Area, the Sponsors will implement the changes by updating the applicable Service Area Map(s) and One Window accordingly, and will provide written notice of the changes to all Proponents on or prior to the Service Area Amendment Deadline.

3.3 Communications Restrictions

3.3.1 Communications with Municipalities, Other Government Authorities and Utilities

- (1) Subject to RFP Section 3.3.4(3), No Proponent, Proponent Team Member or Advisor to a Proponent or Proponent Team member shall communicate with any municipality, utility (including any local distribution company), Indigenous group or Ontario One Call in relation to the any Project prior to the end of the Auction in respect of such Project.
- (2) Subject to the restrictions in RFP Section 3.3.2 and any applicable requirements of the Project Agreement, following the end of the Auction in respect of a Project, the Preferred Proponent, Alternate Proponent and Successful Proponent and their respective Advisors are permitted to communicate directly with any municipality, utility (including any local distribution company), Indigenous group or Ontario One Call in relation to the applicable Project.
- (3) 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(3) shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Qualified Participants, 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 3.3.2(1), 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, the Building Broadband Faster Act Guideline 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;
 - (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 do not, 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, any Project or the AHSIP 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 a Proponent to discuss the Project(s) with prospective subcontractors or other Team Members but such disclosure is permitted only to the extent necessary to solicit those parties' participation in the applicable Project(s).

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 the 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 and Proponent Team Members and their respective Advisors, employees and representatives.
- (3) Notwithstanding RFP Sections 3.3.1(1), 3.3.4(1) and 3.3.4(2) and without limiting any other provisions of this Section 3.3, a Proponent may discuss or communicate with another Proponent or Proponent Team Member of another Proponent that is an internet service provider where such discussions or communications relate solely to wholesale telecommunications services for purposes of the Projects.

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**”) 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 AHSIP during any Commercially Confidential Meeting 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.
- (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 AHSIP during any Commercially Confidential Meeting 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, 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 AHSIP during any Commercially Confidential Meeting 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 AHSIP 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 Proponents and Proponent Team Members

- (1) Each Proponent is composed of one or more Proponent Team Members and Proponent Team Members may be members of more than one Proponent Team, provided that, in respect of any Service Area, no Prime Team Member shall be permitted to be a Proponent Team Member of more than one Proponent team participating in the Auction or making an Alternative Submission for that Service Area.

- (2) 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, proposed subcontractors, or other parties identified in the Proponents' Prequalification Submissions (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors.
- (3) 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.
- (4) No later than the Pre-Auction 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.
- (5) 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 5 Business Days following the occurrence of the date of withdrawal or the Pre-Auction Submission Deadline, whichever is earlier.
- (6) A request notice delivered under either RFP Sections 3.5(4) or 3.5(5), 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 in the form prescribed by Part F of Schedule 2 to this RFP, and (ii) an updated Conflicts of Interest Screening List in the form prescribed by Part G of Schedule 2 to this RFP;
 - (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.
- (7) In reviewing a request made in accordance with RFP Section 3.5(6), 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(4) or 3.5(5), as applicable. The Sponsors are under no obligation to consider any further documentation or additional information delivered after the applicable deadline.
- (8) 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 Section 3.5.
- (9) For greater certainty, no Proposed Change shall be permitted where such Proposed Change would result in a Prime Team Member of a Proponent team being a Proponent Team Member of more than one Proponent team participating in the Auction for the same Service Area or making an Alternative Submission in respect of the same Service Area.
- (10) 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(5));
 - (b) a Proposed Change in Identified Proponent Party is made after the deadlines set out in RFP Sections 3.5(4) or 3.5(5), as applicable; or
 - (c) a change in circumstances with respect to a Proponent after the Pre-Auction 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.
- (11) If, at any time prior to Commercial Close, and notwithstanding any other provision in this RFP, there is a Change in Control of a Proponent or of one of its Proponent Team Members (the "**Acquiree**") as a result of an acquisition of the Acquiree by one of the other Proponents or one of the other Proponent's Proponent Team Members (the "**Acquirer**") and such Change in Control results in a Prime Team Member being a Proponent Team Member of more than one Proponent participating in the Auction for the same Service Area or making an Alternative Submission in respect of the same Service Area,
- (a) the Acquiree shall be immediately disqualified from further participation in this RFP Process. In the event that a Proponent Team Member is the Acquiree, the affected Proponent may request a change of the Acquiree and the Sponsors shall consider such request in their sole discretion in accordance with this RFP Section 3.5. In the event that such request to change the Proponent Team Member is rejected by the Sponsors, the Sponsors shall disqualify the Proponent from continuing in the RFP Process; or
 - (b) the Sponsors may, in their sole discretion, allow the Acquirer to continue in the RFP Process, however, the Sponsors' consent to continue may be subject to such terms and conditions as the Sponsors may require.

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 Pre-Auction Submission Deadline (for matters relating to the Pre-Auction Submission), prior to the each Auction (for matters relating to such Auction, including Alternative Submissions) and prior to the Post-Auction Validation Submission Deadline (for matters relating to the Post-Auction Validation 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 to ensure 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 placing them in the Data Room and notifying the Proponents' Representatives by e-mail that an Addendum has been placed in the Data Room.
- (4) 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 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 Qualified Participant 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 obligation shall govern.

3.7.3 Confidential Information

- (1) For the purpose of this 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 AHSIP, 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 this RFP Process or the performance of any subsequent agreement relating to the Projects 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 or the performance of any subsequent agreement relating to the Projects 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 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 this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Qualified Participants, 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 the 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 AHSIP.
- (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 Her Majesty the Queen 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 the ISP (as defined in the Project Agreement) in relation to the AHSIP, be liable to the Sponsors, Her Majesty the Queen 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 Her Majesty the Queen 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 Her Majesty the Queen 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, Her Majesty the Queen 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 in the form prescribed by Part F of Schedule 2 to this RFP.
- (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 Conflicts 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 Proponent Advisor 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 this 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 a 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 AHSIP; 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 AHSIP 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 AHSIP, 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 AHSIP 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 AHSIP 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.
- (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 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. To obtain consent for an Ineligible Person's Affiliate to participate as a Proponent Team Member or Advisor to the Proponent, 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;
 - (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 Pre-Auction 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 prescribed by Part G of Schedule 2 to this RFP, which list shall be used by the Sponsors in its 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 Sponsors in respect of the AHSIP.

3.9 Constructor Requirements

- (1) A Constructor may participate on more than one Proponent team, including more than one Proponent team bidding on the same Service Area.

- (2) Proponents and Proponent Team Members shall not, at any time during the RFQ Process or RFP Process, enter into exclusivity arrangements with any Constructor, including a prospective Constructor.
- (3) As a condition to participating in an Auction or making an Alternative Submission, each Proponent Team Member will be required to confirm that it has not entered into any exclusivity arrangement with any Constructor in respect of the AHSIP.
- (4) 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 requirements prescribed by the Sponsors pursuant to this Section 3.9.

3.10 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 this 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) In respect of each applicable Service Area, Proponents shall submit Proposals organized in accordance with and in the format set out in Schedules 2, 3 and 4 to this RFP.
- (2) Proponents shall submit Proposals in three parts as follows:

-
- (a) Part 1 – the pre-auction submission (the “**Pre-Auction Submission**”) in accordance with Schedule 2 to this RFP, consisting of:
- (i) Financial Document Requirements (Part A of Schedule 2 to this RFP);
 - (ii) Service Area and Process Declaration Requirements (Part B of Schedule 2 to this RFP);
 - (iii) Proponent Team Member Submission Requirements (Part C of Schedule 2 to this RFP);
 - (iv) Letter of Credit (Part D of Schedule 2 to this RFP);
 - (v) Proponent Team Member Declaration (Part F of Schedule 2 to this RFP); and
 - (vi) Conflicts of Interest Screening List (Part G of Schedule 2 to this RFP).
- (b) Part 2 – pursuant to the Auction or an Alternative Submission in accordance with Schedule 3 to this RFP, consisting of:
- (i) a Bid Price or Total Premises Coverage and Wired Premises Coverage for Wired Service Areas (Part A of Schedule 3 to this RFP); or
 - (ii) a Bid Price or Total Premises Coverage and Wired Premises Coverage for Wireless Service Areas (Part B of Schedule 3 to this RFP); and
- (c) Part 3 – the post-auction validation submission (the “**Post-Auction Validation Submission**”) (only required in the event a Proponent becomes the Preferred Proponent or Alternate Proponent in respect of a Service Area), consisting of:
- (i) a Solution Summary (Part A of Schedule 4 to this RFP);
 - (ii) Solution Details (Part B of Schedule 4 to this RFP);
 - (iii) Network Segment Maps (Part C of Schedule 4 to this RFP);
 - (iv) Construction Readiness Requirements (Part D of Schedule 4 to this RFP); and
 - (v) Project Budget Requirements (Part E of Schedule 4 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 Schedules 2, 3 and 4 to this RFP.

4.2 Proposal Letter of Credit

4.2.1 Proposal Letter of Credit

- (1) Each Proponent shall provide as part of its Pre-Auction Submission an irrevocable, unconditional standby letter of credit (the “**Letter of Credit**”) from a Canadian chartered bank listed in Schedule I or Schedule II to the *Bank Act* (Canada) and in the form attached as Part D to Schedule 2 to this RFP, in an amount equal to 3% of the aggregate of the Reserve Prices for all of the Proponent’s Declared Service Areas, to secure the Proponent’s obligations in accordance with RFP Section 4.2.1(3).
- (2) Subject to the Sponsors’ right to retain and apply the Letter of Credit as liquidated damages as provided in this RFP, the Letter of Credit shall be returned to the Proponent as follows:
 - (a) 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 of Credit by the Proponent;
 - (b) in the event that a Proponent is not selected as the Preferred Proponent or the Alternate Proponent of a given Service Area included as part of such Proponent’s Pre-Auction Submission, such Proponent’s Letter of Credit shall be reduced by an amount equal to 3% of the Reserve Price for such Service Area; provided that if the Letter of Credit would be reduced to nil as a result of the foregoing, it shall be cancelled; or
 - (c) in the event that a Proponent withdraws or is deemed to have withdrawn its Pre-Auction Submission pursuant to RFP Section 5.2 in respect of a given Service Area, such Proponent’s Letter of Credit shall be reduced by an amount equal to 3% of the Reserve Price for such Service Area; provided that if the Letter of Credit would be reduced to nil as a result of the foregoing, it shall be cancelled.
- (3) In the event that a Proponent is selected as the Preferred Proponent or the Alternate Proponent for a Service Area 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 a Service Area within seven weeks of being named as the Successful Proponent for that Service Area, the Sponsors shall be entitled to draw on such Proponent’s Letter of Credit in an amount equal to 3% of the Reserve Price for such Service Area 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.

- (4) The Sponsors shall not be required to give any prior written notice to the Proponent of their intention to draw on the Letter of Credit. If the Proponent notifies the Contact Person in writing that the Proponent disputes the Sponsors' right to draw on the Letter of Credit and to retain the proceeds as liquidated damages, then the Sponsors shall nonetheless be entitled to draw on the Letter of Credit, but to the extent 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 Proponent fails to renew or extend the Letter of Credit at least 30 days prior to its expiry date, the Sponsors may, at any time without notice to the Proponent, draw on the Letter of Credit and hold the proceeds thereof in the same manner and for the same purposes as the Letter of Credit.

4.3 Surety's Confirmation Letter

4.3.1 Surety's Confirmation Letter

- (1) Each Proponent must submit a surety confirmation letter as set out in Schedule 2 to this RFP confirming that the Proponent has access to a performance bond and a labour and material payment bond for the Project(s) as required by the Project Agreement.

SECTION 5 SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL

5.1 Submission of Proposal

5.1.1 Pre-Auction Submission

- (1) Each Proponent shall submit its Pre-Auction Submission on or before the Pre-Auction Submission Deadline. For the purposes of the RFP Process, the determination of whether the Pre-Auction Submission has been submitted on or before the Pre-Auction Submission Deadline shall be based on the time and date stamp the Proponent receives from Coupa. A Pre-Auction Submission received after the Pre-Auction Submission Deadline, as documented by the electronic time and date stamp, shall be returned unopened to the sender.
- (2) Proponents shall submit their Pre-Auction Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the Pre-Auction Submission is received by Infrastructure Ontario prior to the

Pre-Auction Submission Deadline, and to ensure it receives a date and time stamp receipt from Coupa confirming its timely delivery. The Sponsors will not accept a Pre-Auction Submission delivered by electronic mail.

- (3) Proponents shall provide electronic copies of their Pre-Auction Submission in the formats specified in Schedule 2 to this RFP.
- (4) If there is any difference whatsoever between the electronic copies of the Pre-Auction Submission in PDF Format and native file format submitted through Coupa, the copy of the Pre-Auction Submission in the PDF format submitted through Coupa shall govern.

5.1.2 Live Auction and Alternative Submissions

- (1) Each Proponent may participate in the Auction or make an Alternative Submission (based on the Proponent's Process Declaration) in respect of the Service Areas included in the Proponent's Service Area Declaration at the date and time specified in the Timetable.
- (2) Each Proponent shall submit its Bid Price or Total Premises Coverage and Wired Premises Coverage, as the case may be, in respect of such Service Area using only the method set out in the RFP Data Sheet and in accordance with the Auction process described in Schedule 3 to this RFP.

5.1.3 Post-Auction Validation Submission

- (1) Each Preferred Proponent and Alternate Proponent shall submit its Post-Auction Validation Submission on or before the Post-Auction Validation Submission Deadline. For the purposes of the RFP Process, the determination of whether the Post-Auction Validation Submission has been submitted on or before the Post-Auction Validation Submission Deadline, shall be based on the time and date stamp the Preferred Proponent receives from Coupa. A Post-Auction Validation Submission received after the Post-Auction Validation Submission Deadline, as documented by the electronic time and date stamp, shall be returned unopened to the sender.
- (2) Preferred Proponents and Alternate Proponents shall submit their Post-Auction Validation Submission using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Preferred Proponent and Alternate Proponent to ensure that each of the Post-Auction Validation Submissions is received by the Sponsors prior to the Post-Auction Validation Submission Deadline, and to ensure it receives a date and time stamp receipt from Coupa confirming its timely delivery. The Sponsors will not accept a Post-Auction Validation Submission delivered by electronic mail.
- (3) Preferred Proponents and Alternate Proponents shall provide an electronic copy of their Post-Auction Validation Submission in the format specified in Schedule 4 to this RFP.

- (4) If there is any difference whatsoever between the electronic copy of the Post-Auction Validation Submission in PDF Format and native file format submitted through Coupa, the copy of the Post-Auction Validation Submission in the PDF format submitted through Coupa shall govern.

5.2 Withdrawal of Proposals

- (1) A Proponent may withdraw its Pre-Auction Submission using Coupa before the Pre-Auction Submission Deadline.
- (2) Any Proponent that fails to submit a Bid Price in an Auction or make an Alternative Submission, as applicable, in respect of any of such Proponent's Declared Service Areas shall be deemed to have withdrawn its Pre-Auction Submission in respect of that Service Area.

5.3 Amendment of Proposal

- (1) Proponents may amend their Pre-Auction Submission or Post-Auction Validation Submission after submission but only if the Pre-Auction Submission is resubmitted on or before the Pre-Auction Submission Deadline and the Post-Auction Validation Submission is resubmitted on or before the Post-Auction Validation Submission Deadline, in accordance with the following:
 - (a) the Proponent shall withdraw its original Pre-Auction Submission or Post-Auction Validation Submission using Coupa before the Pre-Auction Submission Deadline or Post-Auction Validation Submission Deadline, as applicable; and
 - (b) the Proponent shall submit a revised replacement Pre-Auction Submission or Post-Auction Validation Submission in accordance with the RFP Documents and on or before the Pre-Auction Submission Deadline or Post-Auction Validation Submission Deadline, as applicable, 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 Pre-Auction Submission before the Pre-Auction 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 relevant Service Area, (ii) where the Proponent is identified as a Preferred Proponent or an Alternate Proponent for the relevant Service Area, sixty-five (65) days after the Auction for that Service Area, or (iii) until Commercial Close has been achieved for the relevant Service Area, 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 Proponents and 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 Successful 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 in respect of a Service Area prior to the expiration of the Proposal Validity Period if the Signing Parties and the Preferred Proponent reach Commercial Close in respect of such Service Area 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 Pre-Auction Submissions and evaluating Post-Auction Validation 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 Pre-Auction 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 scoring 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 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 Pre-Auction Submission and Post-Auction Validation 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 that 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 Schedules 2, 3 and/or 4 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 Schedules 2, 3 and/or 4 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 Section 9.2 of this RFP, or of ISP under the Project Agreement to bring all aspects of a Proponent’s proposed design, construction or operations into conformance with the requirements of the Project Agreement, pursuant to its terms.

6.5 Phases in the Evaluation Process

6.5.1 Phase 1 – Review of the Pre-Auction Submission

- (1) In Phase 1 of the evaluation process, the Sponsors shall review the Pre-Auction Submission to:
 - (a) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submissions, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.5;
 - (b) assess the Conflict of Interest and Confidential Information sections of the Pre-Auction Submission; and
 - (c) ensure all of the required documents and information have been submitted.
- (2) In the event that a Proponent fails to include in its Pre-Auction Submission any of the required documents or information, as set out in Schedule 2 to this RFP, the Proponent’s Proposal will not continue to Phase 2 of the evaluation process.

6.5.2 Phase 2 – Live Auction and Alternative Submission Process

- (1) In Phase 2 of the evaluation process, each Proponent may participate in the Auction or make an Alternative Submission in respect of the Service Areas included in such Proponent’s Service Area Declaration in accordance with Schedule 3 to this RFP.

- (2) The Proponents will be ranked in accordance with the scoring criteria set out in Schedule 3 to the RFP. The Proponent with the highest-ranking Proposal at the end of the Auction for each Service Area will be selected as the Preferred Proponent for that Service Area. The Proponent with the second ranking Proposal will be selected as the alternate proponent (the “**Alternate Proponent**”) for that Service Area.
- (3) In the event that the Preferred Proponent for a Service Area is disqualified pursuant to RFP Section 6.5.3 or is unable, unwilling or otherwise fails to execute the Project Agreement, the Sponsors may invite the Alternate Proponent to become the “Preferred Proponent” for that Service Area.
- (4) The Preferred Proponent and the Alternate Proponent must submit a Post-Auction Validation Submission in accordance with Schedule 4 to this RFP to demonstrate the feasibility of its proposal.

6.5.3 Phase 3 – Review of the Post-Auction Validation Submission

- (1) In Phase 3 of the evaluation process, the Sponsors and its advisors shall review the Post-Auction Validation Submission of the Preferred Proponent and the Alternate Proponent for each Service Area to assess whether it satisfies the requirements set out in Schedule 4 to this RFP.
- (2) If the Post-Auction Validation Submission of a Preferred Proponent satisfies the requirements set out in Schedule 4 to this RFP, such Preferred Proponent will be declared as the Successful Proponent in respect of the relevant Service Area.
- (3) If the Sponsors identify a Material Deviation in the Post-Auction Validation Submission of a Preferred Proponent then, subject to RFP Section 6.3(3)(b), the Sponsors may determine that the Proposal to which the Post-Auction Validation Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5) and 6.5.2(3).

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 failure to comply constitutes a Material Deviation;
 - (d) the rankings of the Proposals; and

- (e) 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 a prequalification process preceded this 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 a Proponent Team Member that the Sponsors have experienced; and/or
 - (b) any publicly available information about a Proponent or a Proponent Team Member 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 a Preferred Proponent under this RFP) at any time prior to Commercial Close with respect to a Preferred Proponent, 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 of 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 Pre-Auction 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 AHSIP; 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 PREFERRED PROPONENT

8.1 Identification of Preferred Proponents and Alternate Proponents

- (1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify Preferred Proponents in accordance with RFP Section 6.5.2(2).
- (2) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify Alternate Proponents in accordance with RFP Section 6.5.2(2).

8.2 Preferred Proponent and Alternate Proponent Obligations

- (1) Each Preferred Proponent and Alternate Proponent shall submit a Post-Auction Validation Submission in accordance with RFP Section 5.1.3 prior to the Post-Auction Validation Submission Deadline.
- (2) Each 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 and validation investigations.

SECTION 9 SUCCESSFUL PROPONENTS

9.1 Identification of Successful Proponents

- (1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify Successful Proponents in accordance with RFP Section 6.5.3(2).

9.2 Successful Proponent Obligations

- (1) Each Successful 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 5; 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 Successful 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).

- (2) Each Successful 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. Each Successful Proponent shall provide to the Sponsors, in a timely fashion, final draft versions of all documents required to be delivered by the Successful Proponent in accordance with the Project Agreement, together with such other documentation as Infrastructure Ontario may reasonably request from time to time.
- (3) Each Successful Proponent acknowledges and agrees that, except for those parts of its Proposal which are, in the sole discretion of the Sponsors, incorporated by explicit reference into the Project Agreement, on Commercial Close, the RFP

Documents and the Proposal will be superseded entirely by the executed Project Agreement.

9.3 The Sponsors Authorization and Approvals

- (1) Each Successful 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 AHSIP or the relevant Project, 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, the Total Premises Coverages and the Wired Premise Coverages) and the Project Agreement and/or accept new or additional information from any or all Proponents in respect of a Service Area 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 Preferred 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 Proposal is received in respect of a Service Area, elect to accept or reject it or enter into negotiations with the 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 for a Service Area but before Commercial Close for that Service Area;
 - (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, including the Service Areas; and
 - (k) cancel this RFP Process in whole or in part and subsequently advertise or call for new submissions for the same or different subject matter of these 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, in accordance with RFP Section 5.4(1).
- (3) Each Proponent Team Member of any 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 of any Proponent 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 or ethical behaviour 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 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 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 in respect of a Service Area 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 in relation to that Service Area; or
 - (b) carry out a process whereby all Proponents who participated in the Auction or made an Alternative Submission in respect of such Service Area 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 of the Proponents who participated in the Auction or made an Alternative Submission in respect of such Service Area to attempt to finalize an agreement.
- (2) If the Sponsors receive,
 - (a) one Proposal in respect of a Service Area and that Proposal is compliant; or
 - (b) more than one Proposal in respect of a Service Area, but only one compliant Proposal,

the Sponsors may, in their sole discretion take any action in accordance with RFP Section 10.1(1) in relation to that Service Area.
- (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.

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 Project (often referred to as "**Contract B**"). Except where expressly stated otherwise in this RFP, including as provided in RFP

Section 4.2, 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 4.2, 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 a Successful Proponent and executes a 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 Proponent Advisor 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 AHSIP 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 this 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 this 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, the AHSIP and the Projects under the AHSIP, 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 RFQ, the AHSIP and the Projects under the AHSIP. This 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 Section 10.7.

10.8 Acknowledgment re Potential Competition Within Service Areas

- (1) By submitting any part of a Proposal, each Proponent and Proponent Team Member expressly acknowledges and accepts that:
 - (a) the AHSIP is not an exclusive process in relation to any Service Area and other internet service providers may choose to build broadband infrastructure within any Service Area or within all of the Service Areas 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 an Auction for a Service Area, the Sponsors shall notify the Preferred Proponent and Alternate Proponent of their status as such. Once the Preferred Proponent and the Alternate Proponent have been notified, the Sponsors will formally notify all other Proponents in the RFP Process for that Service Area that they have not been selected and will make available to all Proponents the number of Proposals received by the Sponsors for such Service Area, broken down by number of Proposals received through the Auction and number of Proposals received as Alternative Submissions. Following such notification, those Proposals belonging to the Preferred Proponents and the Alternate Proponents shall be irrevocable until the expiration of the Proposal Validity Period for such Proposals (or extended Proposal Validity Period, if applicable) or Commercial Close, in accordance with RFP Section 5.4.
- (2) Anytime after the Successful Proponent has been identified for a Service Area, the Sponsors will formally notify the Alternate Proponent in the RFP Process for that Service Area 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, and a member or members of the Evaluation Committee will meet with any unsuccessful Proponents, at the request of the unsuccessful Proponent, to provide a de-briefing.

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) "**Acquiree**" is defined in RFP Section 3.5(11);
- (2) "**Acquirer**" is defined in RFP Section 3.5(11);
- (3) "**Addendum**" means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.6;
- (4) "**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;
- (5) "**Affiliate**" means an "**affiliate**" as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (6) "**AHSIP**" means the Accelerated High Speed Internet Program;
- (7) "**Alternate Proponent**" is defined in RFP Section 6.5.2(2);
- (8) "**Alternative Submission**" means a Total Premises Coverage and Wired Premises Coverage submitted by a Proponent in accordance with Schedule 3 to this RFP;
- (9) "**Alternative Submission Deadline**" means, in respect of a Service Area, 5:00 pm (Toronto time) on the Business Day prior to the Auction for that Service Area;
- (10) "**Auction**" means a reverse auction in respect of a Service Area as described in Schedule 3 to this RFP;

- (11) **“Auction Submission”** means a Bid Price submitted by a Proponent in an Auction in accordance with Schedule 3 to this RFP;
- (12) **“Auction Training Materials”** is defined in RFP Section 2.4(1)(b);
- (13) **“Background Information”** means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (14) **“Bid Price”** is a dollar value of the subsidy bid placed by a Proponent in respect of the Project within each Service Area, which shall not exceed the Reserve Price;
- (15) **“Broadband Services”** is defined in the Project Agreement;
- (16) **“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;
- (17) **“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;
- (18) **“Client”** is defined in RFP Section 1.1(1);
- (19) **“Commercial Close”** with respect to a Service Area means the date the Project Agreement is signed by the Successful Proponent for such Service Area and the Signing Parties;
- (20) **“Commercial Close Target Date”** means the date set out as the Commercial Close Target Date for the applicable Service Area in the Timetable;
- (21) **“Commercially Confidential Meetings”** is defined in RFP Section 3.4.2(1);
- (22) **“Commercially Confidential RFIs”** is defined in RFP Section 3.2.2(1)(a)(ii);
- (23) **“Confidential Information”** is defined in RFP Section 3.7.3(1);
- (24) **“Conflict of Interest”** is defined in RFP Section 3.8.1(7);
- (25) **“Conflicts of Interest Screening List”** is defined in Schedule 2;
- (26) **“Constructor”** means any entity or entities that would be responsible for constructing the broadband network infrastructure (including, without limitation, the goods and services associated with the design, construction and installation of wired and wireless network infrastructure) for the relevant Project;

- (27) “**Contact Person**” is defined in RFP Section 3.2.1;
- (28) “**Coupa**” means the electronic tendering software named COUPA;
- (29) “**Data Room**” is defined in RFP Section 2.4(1);
- (30) “**Evaluation Committee**” is defined in RFP Section 6.1;
- (31) “**Fairness Advisor/Monitor**” is defined in the RFP Data Sheet;
- (32) “**FIPPA**” is defined in RFP Section 3.7.1(1);
- (33) “**General RFIs**” is defined in RFP Section 3.2.2(1)(a)(i);
- (34) “**Government of Ontario**” means Her Majesty the Queen in right of the Province of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;
- (35) “**Identified Proponent Parties**” is defined in RFP Section 3.5;
- (36) “**includes**” and “**including**” means “**includes without limitation**” and “**including without limitation**” respectively;
- (37) “**Ineligible Person’s Affiliate**” is defined in RFP Section 3.8.2(1);
- (38) “**Ineligible Persons**” is defined in RFP Section 3.8.2(1);
- (39) “**Infrastructure Ontario**” is defined in RFP Section 1.1(1);
- (40) “**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;
- (41) “**IO**” is defined in RFP Section 1.1(1);
- (42) “**ISP**” is the internet service provider Proponent Team Member of the Successful Proponent that has executed the Project Agreement with the Signing Parties;
- (43) “**Letter of Credit**” is defined in RFP Section 4.2.1(1);
- (44) “**Letter of Credit Provider**” is defined in RFP Section 4.2.1(1);
- (45) “**Material Deviation**” is defined in RFP Section 6.3(1);
- (46) “**Ministry**” is defined in the RFP Data Sheet;
- (47) “**MOI**” means the Ministry of Infrastructure;

- (48) “**OILC**” is defined in RFP Section 1.1(1);
- (49) “**One Window**” is defined in RFP Section 2.4(2);
- (50) “**Optional Premises**” means, with respect to any Service Area, the premises identified as such for such Service Area in One Window;
- (51) “**Post-Auction Validation Submission**” is defined in RFP Section 4.1(2)(c);
- (52) “**Post-Auction Validation Submission Deadline**” is defined in RFP Section 3.1(1);
- (53) “**Pre-Auction Submission**” is defined in RFP Section 4.1(2)(a);
- (54) “**Pre-Auction Submission Deadline**” is defined in RFP Section 3.1(1);
- (55) “**Preferred Proponent**” is defined in RFP Section 1.1(2);
- (56) “**Premises**” is defined in the Project Agreement. For the purposes of this RFP, Premises does not include any Optional Premises;
- (57) “**Prequalification Submission**” is defined in RFP Section 1.2(1);
- (58) “**Prime Team Member**” means any entity that is a member of a Proponent 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;
- (59) “**Process Declaration**” is defined in Schedule 2;
- (60) “**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 a Preferred Proponent, an Alternate Proponent or a 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 AHSIP 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 this RFP Process; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;
- (61) **“Projects”** is defined in RFP Section 1.1(5);
- (62) **“Project Agreement”** are those documents listed as the **“Project Agreement”** in the RFP Data Sheet;
- (63) **“Proponent”** is defined in RFP Section 1.1(2);
- (64) **“Proponent Representative”** is defined in RFP Section 1.2(2);
- (65) **“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 this RFP Process, including a Prime Team Member;
- (66) **“Proponent Team Member Declaration”** is defined in Schedule 2;
- (67) **“Proponent’s Service Area Declaration”** is defined in Schedule 2;
- (68) **“Proponents Meeting”** is defined in RFP Section 3.4.1(1);
- (69) **“Proposal”** is defined in RFP Section 1.1(2);
- (70) **“Proposal Information”** is defined in RFP Section 3.7.4(6);
- (71) **“Proposal Information Licence”** is defined in RFP Section 3.7.4(4);
- (72) **“Proposal Validity Period”** is defined in RFP Section 5.4(1);

- (73) “**Proposed Change in Identified Proponent Party**” is defined in RFP Section 3.5(4);
- (74) “**Qualified Participants**” is defined in RFP Section 1.2(1);
- (75) “**Reserve Price**” is the maximum subsidy amount that Proponents are allowed to bid during the Auction for a Service Area;
- (76) “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) 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 Project(s) in whole or in part 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 individual is a “**Restricted Person**” is made hereunder, whether or not such person 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 ability of the Proponent to perform its obligations under the Project Agreement, if it were to become the successful Proponent under the RFP Process; or
 - (h) has a material interest in the production of tobacco products;
- (77) “**RFI**” is defined in RFP Section 2.2(2);
 - (78) “**RFP**” is defined in RFP Section 1.1(1);
 - (79) “**RFP Data Sheet**” means Schedule 1 to this RFP;
 - (80) “**RFP Documents**” is defined in RFP Section 2.1;
 - (81) “**RFP Process**” is defined in RFP Section 1.1(3);
 - (82) “**RFQ**” is defined in RFP Section 1.2(1);
 - (83) “**RFQ Process**” is defined in RFP Section 1.2(1);
 - (84) “**RFQ Stage**” is defined in RFP Section 1.3(1)(a);
 - (85) “**Service Area**” means certain designated eligible regions in Ontario as identified in the Service Area Maps;
 - (86) “**Service Area Maps**” means the auction lot maps provided as Background Information displaying the geographical outer boundaries of the relevant Service Area and including, among other information, the required technology type (wired or wireless) for such Service Area, the Reserve Price for such Service Area and the number of Premises to which Broadband Services are required to be made available within such Service Area;
 - (87) “**Service Area Amendment Deadline**” means the date set out as the Service Area Amendment Deadline in the Timetable;

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- (88) **“Service Area Proposal Deadline”** means the date set out as the Service Area Proposal Deadline in the Timetable;
- (89) **“Signing Parties”** is defined in RFP Section 1.1(6);
- (90) **“Sponsors”** is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (91) **“Successful Proponent”** is defined in RFP Section 1.1(2);
- (92) **“Timetable”** is defined in RFP Section 3.1(1);
- (93) **“Total Premises Coverage”** with respect to a Service Area means the number of Premises within such Service Area to which the Proponent will make Broadband Services available in accordance with the requirements of the Project Agreement for the Reserve Price;
- (94) **“Wired Premises Coverage”** with respect to a Service Area means the number of Premises within such Service Area to which the Proponent will make Broadband Services available using Wired Technology in accordance with the requirements of the Project Agreement for the Reserve Price;
- (95) **“Wired Service Area”** is defined in Schedule 3;
- (96) **“Wired Technology”** means broadband infrastructure capable of providing Broadband Services to the relevant premises at speeds of 1,000 Mbps download and 100 Mbps upload;
- (97) **“Wireless Service Area”** is defined in Schedule 3; and
- (98) **“Wireless Technology”** means broadband infrastructure capable of providing Broadband Services to the relevant premises at speeds of 50 Mbps download and 10 Mbps upload.