



Infrastructure Ontario

REQUEST FOR PROPOSALS

NUCLEAR PROCUREMENT PROJECT

RFP No. OIPC 08-00-I027

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REQUEST FOR PROPOSALS

SECTION 1 – INTRODUCTION

1.1 Background and Project Description

(1) As part of a continuing effort to maintain its nuclear generation capacity, and prior to the commencement of this Request for Proposals Process, the Government of Ontario commissioned an independent and comprehensive review of the current commercially available nuclear reactor designs. A second and similar review was carried out by Ontario Power Generation and Bruce Power L.P. These reviews were carried out on an international basis and assessed several designs on strategic, commercial, technical and economic criteria. As an outcome of these two international reviews, the Government of Ontario has identified four reactor designs and corresponding vendors that best meet these initial assessment criteria. Following on from these initial international assessment processes, the two-phased RFP Process outlined in this Request for Proposals aims to select a single Preferred Vendor based on commercial and financial terms and conditions and in accordance with the process set out in this RFP.

(2) This RFP is in respect of a project to develop, construct and provide licensing, commissioning and engineering, operations and maintenance support and fuel supply, and possibly financing, of a stand-alone two-unit nuclear power plant, at an Ontario site to be specified in Phase 2 of the RFP Process, to provide roughly 2,000-3,500 MWe of baseload generation capacity to the Ontario grid (the “Project”). As a subset of this competitive procurement process, Respondents are also required to submit a supplementary offer, in accordance with the Proposal Submission Form, that presents an option, exercisable by the Government of Ontario in its sole discretion, for an additional one or two units, based on the same terms and conditions as the Project Agreement and at a site to be designated by the Government of Ontario.

1.2 General

(1) This Request for Proposals (“RFP”) is issued by the Ontario Infrastructure Projects Corporation (“Infrastructure Ontario”, also known as “OIPC” and “IO”) on behalf of the Ministry of Energy and Infrastructure of the Government of Ontario (the “Client” in the RFP Process and this RFP). For the purposes of the execution of the Project Agreement in accordance with this RFP, Ontario Power Generation will be the “Client”. The Government of Ontario has requested, and Ontario Power Generation and Bruce Power L.P. have agreed, that Ontario Power Generation and Bruce Power L.P. will provide expert advice and assistance to the RFP Process.

(2) Based on the reviews conducted by Ontario Power Generation, Bruce Power L.P. and the Government of Ontario as described in RFP Section 1.1(1), only those parties invited to participate in this RFP Process, using the design listed, may submit responses to this RFP. Those parties invited to participate (and the corresponding designs) are:

- (a) AREVA NP (US EPR);
- (b) Atomic Energy Canada Limited (ACR – 1000);
- (c) GE – Hitachi Nuclear Energy International LLC (ESBWR); and
- (d) Westinghouse Electric Company LLC (AP 1000).

(3) Only the invited Respondents named in RFP Section 1.2(2) are permitted to submit either a Phase 1 or Phase 2 Proposal Submission in accordance with the RFP Process. Unless the Respondent receives prior written consent from Infrastructure Ontario, it shall not substitute a different Respondent (for example, substituting a Respondent Affiliate or a consortium in which the Respondent is a member) for an invited Respondent named in RFP Section 1.2(2).

(4) Notwithstanding RFP Section 1.2(2), if Infrastructure Ontario determines, in its sole discretion, that additional Respondents should be invited to participate in Phase 1 of the RFP Process, Infrastructure Ontario may, in its sole discretion, invite additional Respondents to participate. Notice of the addition of an invited Respondent shall be given by Infrastructure Ontario to the Respondents by Addendum to this RFP.

(5) In this RFP, the parties invited to make submissions in response to this RFP, as listed in RFP Section 1.2(2), and those Respondents who actually submit responses to this RFP are both referred to as “Respondents” and their submissions are referred to as “Phase 1 Proposal Submissions”, “Phase 2 Proposal Submissions” or, collectively, as “Proposals”, as applicable. For the purpose of clarity, in this RFP,

- (a) the expression “Respondents” includes invited Respondents prior to the submission of their Proposals; and
- (b) the expression “Government of Ontario” includes all Ministries of the Government of Ontario and the Ontario Financing Authority.

(6) The entity identified by Infrastructure Ontario as successful in the RFP Process (in accordance with RFP Section 8.1) is referred to as the “Preferred Vendor”. The Preferred Vendor will be required to,

- (a) sign an agreement (the “Project Agreement”) as more particularly set out in this RFP; and
- (b) cause Fuel Co to sign a nuclear fuel supply and services agreement (“Fuel Agreement”) as more particularly set out in this RFP.

(7) The procurement process to select a Preferred Vendor shall commence with the issuance of this RFP and shall terminate on the date that the Project Agreement is signed by both the Preferred Vendor and the Client (the “Project Agreement Effective Date”) or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable), whichever is first (the “RFP Process”). Phase 1 of the RFP Process will commence on the issuance of the RFP and end with the identification of the Respondents who will be permitted to proceed to Phase 2 of the RFP Process. Phase 2 of the RFP Process will commence on the completion of Phase 1 of the RFP Process.

(8) Only Respondents that submit at least a Phase 1 Proposal Submission in accordance with this RFP will acquire any rights under the RFP. If a Respondent submits a Phase 1 Proposal Submission and either does not receive a “Satisfactory” rating or receives a “Satisfactory” rating and declines to submit a Phase 2 Proposal Submission, it shall acquire only those rights under the RFP that apply to Phase 1 of the RFP Process. All rights and obligations arising out of the RFP (the bidding contract or “Contract A”) terminate on either,

- (a) the Project Agreement Effective Date; or
- (b) the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable),

whichever occurs first.

(9) Infrastructure Ontario will manage the RFP Process and shall be the single point of contact for Respondents. During the RFP Process, Respondents shall contact Infrastructure Ontario only through the Contact Person as set out in RFP Section 3.2.1.

(10) A detailed description of the Project will be contained in the documentation in the Data Room.

(11) It is anticipated that the Preferred Vendor, subject to the requirements and conditions of the RFP Documents, will enter into the Project Agreement, and will cause Fuel Co to enter into the Fuel Agreement (contained in Schedule 18 to the Project Agreement), in the same form and substance as the Project Agreement attached as Schedule 12 to this RFP with the Client.

1.3 Overview of the Competitive Procurement Process and Project Implementation

(1) The current plan of Infrastructure Ontario and the Client is to implement the Project in accordance with the following process:

(a) Initial Investigations and Establishing the Invited Respondents

As an outcome of the international reviews described in RFP Section 1.1(1), the Government of Ontario identified four nuclear reactor designs that best meet its initial assessment criteria. Those four nuclear reactor designs resulted in the naming of the invited Respondents set out in RFP Section 1.2(2).

(b) RFP Procurement Process

The competitive procurement process outlined in this RFP will consist of two phases as follows:

(i) Phase 1 of the RFP Process – Phase 1 of the RFP Process will include:

(A) an assessment, on a Satisfactory/Unsatisfactory basis, of each invited Respondent's,

(I) capability to execute a plan to provide the support necessary for a successful construction licence application;

(II) ability to deliver a successful Canadian safety case on schedule and in compliance with Canadian regulatory requirements;

(III) willingness and capacity to deliver the Project;

(IV) financial strength; and

- (V) legal position (existing claims and history of offences);
 - (B) non-binding confidential discussions with Respondents on matters relating to the development of the Project Agreement; and
 - (C) the provision of advance notice to the Respondents of the likely submission requirements of Phase 2 of the RFP Process so that Respondents have as much time as possible to begin to prepare their Phase 2 Proposal Submissions;
- (ii) Phase 2 of the RFP Process – For those Respondents who achieve a “Satisfactory” rating in Phase 1 of the RFP Process, Phase 2 of the RFP Process will include:
- (A) a review, scoring and ranking of the Respondents’ Phase 2 Proposal Submissions from a commercial, financial, schedule and domestic content perspective;
 - (B) the identification of a Preferred Vendor (with or without negotiations in accordance with RFP Section 8.1);
 - (C) the completion of the applicable internal approval processes by the Government of Ontario to confirm the Preferred Vendor and the Project Agreement; and
 - (D) the completion of the applicable approval processes by the Government of Ontario (which shall include and be subject to the approval by the Executive Council of the Province of Ontario) to confirm the Preferred Vendor and the execution of the Project Agreement.
- (c) Implementation of the Project Agreement

Once the Preferred Vendor and the Client, have executed the Project Agreement, the terms and conditions of the Project Agreement shall determine how the Project is to proceed.

1.4 Fairness Monitor

Infrastructure Ontario has retained the Fairness Monitor named in the RFP Data Sheet to monitor the RFP Process.

1.5 Foreign Export Control and Similar Issues

(1) Infrastructure Ontario acknowledges that some or all of the Respondents (or Respondent Team Members in Phase 2 of the RFP Process) may be subject to export and/or import control laws and regulations (or similar restrictions), of Canada and other jurisdictions, in respect of various types of nuclear information, software, services, equipment or materials furnished or to be furnished by a Respondent (or Respondent Team Member). The Respondent shall inform the Contact Person, in Phase 1 of the RFP Process, by the submission of an RFI in accordance with RFP Section 3.2, if a submission of the Respondent or a prospective

Respondent Team Member is or will be subject to export and/or import control laws and regulations (or similar restrictions) of either Canada or another jurisdiction.

(2) Infrastructure Ontario may, in its sole discretion, discuss any export and/or import control laws and regulations (or similar restrictions) raised in accordance with this RFP Section 1.5 with any individual Respondent in a Commercially Confidential Meeting and may, in Infrastructure Ontario's sole discretion, reach individualized agreements with Respondents to accommodate such restrictions. Notwithstanding the negotiation of any individualized agreement in accordance with this RFP Section 1.5, the Respondent shall be responsible to ensure that all submissions made by it or its Respondent Team Members in respect of this RFP Process comply with all export and import control laws and regulations (or similar restrictions), including licensing requirements.

SECTION 2 – THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents and Issuance

- (1) The RFP Documents (the "RFP Documents") are:
- (a) the RFP;
 - (b) Schedule 1 – RFP Data Sheet;
 - (c) Schedule 2 – Phase 1 Submission Requirements and Evaluation Criteria;
 - (d) Schedule 3 – Phase 1 Commercially Confidential Meetings Submissions;
 - (e) Schedule 4 – Advance Notice of Phase 2 Submissions;
 - (f) Schedule 5 – Phase 1 Proposal Submission Form;
 - (g) Schedule 6 – Phase 2 Submission Requirements and Evaluation Criteria – Commercial and Schedule Submission and Domestic Content Submission;
 - (h) Schedule 7 – Phase 2 Commercially Confidential Meetings Submissions;
 - (i) Schedule 8 – Phase 2 Proposal Submission Form;
 - (j) Schedule 9 – Confidentiality Agreement;
 - (k) Schedule 10 – Closing Documents ;
 - (l) Schedule 11 – Phase 2 Submission Requirements and Evaluation Criteria – Financial and Milestone Payments Submission (Financial Model);
 - (m) Schedule 12 – Project Agreement (including all related Schedules, Appendices and Attachments) as listed in the RFP Data Sheet (for clarity, the Fuel Agreement (and the schedules thereto) are included as a Schedule to the Project Agreement); and
 - (n) Addenda to the RFP Documents, if any.

(2) 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, RFIs and responses to RFIs are not RFP Documents.

(3) Respondents are advised that the RFP Documents will be issued in two phases as follows:

- (a) The RFP, the RFP Data Sheet (Schedule 1), Schedules 2, 3, 4 and 5 will be issued first for the purposes of Phase 1 of the RFP Process (the “Phase 1 Documents”); and
- (b) Schedules 6, 7, 8, 9, 10, 11 and 12 (the “Phase 2 Documents”) will be issued in accordance with the timetable set out in the RFP Data Sheet (the “Timetable”) and will only be issued to those Respondents who achieve a “Satisfactory” rating in Phase 1 of the RFP Process.

(4) Respondents are further advised that the Financial and Milestone Payments Submission attached as Schedule 11 to this RFP and the Project Agreement attached as Schedule 12 (and all Schedules to the Project Agreement, including, for clarity, the Fuel Agreement and its schedules) to this RFP are Confidential Information, subject to RFP Section 3.8.2(1).

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, in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, the RFP shall prevail over the Schedules to the RFP.

(2) Notwithstanding RFP Section 2.2(1), if the Respondent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any term or condition in another RFP Document, the Respondent shall notify Infrastructure Ontario 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 Timetable for the submission of RFIs.

(3) If there is a conflict or inconsistency between,

- (a) Infrastructure Ontario’s electronic version of an RFP Document as placed in the Data Room; and
- (b) any other version of the same RFP Document (whether in electronic or hard copy);

Infrastructure Ontario’s 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 the Respondent, 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 shall prevail over the same RFP Document of an earlier date. For the purposes of this RFP Section 2.2(5), the date of the RFP Document shall be determined by the date and time when the document was placed in the Data Room by Infrastructure Ontario.

2.3 Respondent Representative, Preliminary Indication of Participation and Distribution of Documents to Respondents

- (1) All invited Respondents listed in RFP Section 1.2(2) shall, not later than the deadline set out in the Timetable, provide the Contact Person with,
- (a) the name, address, telephone number, fax number and e-mail address of a Respondent representative who is designated to receive all RFP related information, Addenda and notices from Infrastructure Ontario on behalf of the Respondent and, with respect to Phase 2 of the RFP Process, on behalf of the Respondent and the Respondent Team Members (the “Respondent Representative”); and
 - (b) a preliminary indication as to whether the invited Respondent intends to participate in the RFP Process.
- (2) Each Respondent is solely responsible to ensure that all contact information of the Respondent Representative is accurate and up-to-date at all times during the RFP Process. Respondents may update or revise their Respondent Representatives’ information by notifying the Contact Person, in writing.
- (3) Infrastructure Ontario will circulate this RFP directly to each Respondent by hard copy or e-mail. Except as provided in RFP Section 2.3(4), Infrastructure Ontario will circulate all other RFP Documents, including Addenda, by placing them in the Data Room and notifying the Respondent Representatives by e-mail that RFP Documents or Addenda, as applicable, have been added to the Data Room. Notification to Respondents by Infrastructure Ontario that documents have been added to the Data Room is a courtesy only and Respondents are solely responsible to ensure that they are aware of and have reviewed all documents in the Data Room in accordance with RFP Section 2.4(3) and, in particular, have reviewed all documents either in the Data Room or circulated in accordance with RFP Section 2.3(4) immediately prior to submitting their Phase 1 or Phase 2 Proposal Submissions. For greater clarity, Infrastructure Ontario’s failure to notify Respondents that documents have been added to the Data Room does not relieve any Respondent from its obligation to ensure that it is aware of and has reviewed all documents either in the Data Room or circulated in accordance with RFP Section 2.3(4).
- (4) Infrastructure Ontario may circulate some RFP Documents or Background Information in paper copy. Respondents will be notified of any paper copy circulation and method or requirements for pick-up or delivery by way of a notice in the Data Room.

2.4 Data Room

- (1) Infrastructure Ontario has established an electronic data room (the “Data Room”) at a secure website address for,
- (a) the distribution of RFP Documents and Addenda (including “black-lined” RFP Documents revised by Addenda);
 - (b) the provision of various types of background information for the Respondents’ review, including information with respect to the Site (“Background Information”); and
 - (c) the receipt of RFIs and the posting of responses to RFIs.

- (2) The Data Room will be accessible on approximately the date set out in the Timetable. Infrastructure Ontario may add, delete or amend documents in the Data Room at any time.
- (3) Each Respondent 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 receipt of a Data Room password;
 - (b) has the appropriate software which allows the Respondent to access and download RFP Documents, Background Information and responses to RFIs from the Data Room; and
 - (c) checks the Data Room frequently for the addition, deletion or amendment of RFP Documents and 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, responses to RFIs and Background Information.

2.5 Respondent Investigations

(1) Each Respondent and each of its Respondent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Respondent and Respondent Team Members to satisfy themselves as to all existing conditions affecting the Project or the Project Agreement. The Respondents' and Respondent Team Members' obligations set out in this RFP Section 2.5 apply irrespective of any Background Information, responses to RFIs or information contained in the RFP Documents.

(2) Except as explicitly provided in the Project Agreement, none of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team represent or warrant the accuracy or completeness of any information set out in the RFP Documents or the responses to RFIs or made available to Respondents or Respondent Team Members in the Data Room as Background Information or of any other background or reference information or documents prepared by Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team or by other third parties and which may be made available to Respondents by or through Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team. Respondents and Respondent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information and they acknowledge that any use of or reliance by Respondents or Respondent Team Members on any and all such information shall be at the Respondents' and Respondent Team Members' sole risk and without recourse against Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team.

SECTION 3 – THE RFP PROCESS

3.1 RFP Process Timetable

(1) The deadlines for the submission of the Phase 1 and Phase 2 Proposal Submissions (the "Phase 1 Submission Deadline", the "Phase 2 Submission Deadline" and,

collectively, the “Submission Deadlines”) and the Timetable for the RFP Process are set out in the RFP Data Sheet. Respondents should note that Infrastructure Ontario will issue (by Addendum) a revised Timetable with specific dates for Phase 2 of the RFP Process at the time the Phase 2 Documents are issued in accordance with RFP Section 2.1(3)(b).

(2) Except as provided in RFP Section 5.4, Infrastructure Ontario may amend the Timetable in its sole discretion,

- (a) at any time prior to the applicable Submission Deadline for events that are to occur prior to or on that Submission Deadline, including the applicable Submission Deadline itself; and
- (b) at any time in the RFP Process for events that are to occur after the Phase 2 Submission Deadline.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person – Infrastructure Ontario

(1) Except for communications which occur in Commercially Confidential Meetings as set out in RFP Section 3.4.2, the Respondents shall submit all questions (requests for information) and other communications regarding the RFP Documents (including the Project Agreement), the RFP Process and their Phase 1 or Phase 2 Proposal Submissions to the contact person named in the RFP Data Sheet (the “Contact Person”). The Respondents’ questions and other communications shall be submitted to the Contact Person electronically to the Data Room by uploading in accordance with RFP Section 3.2.2. For clarity, for the purpose of media and public communications, a second Contact Person has been listed in the RFP Data Sheet.

3.2.2 Clarification/Question/RFI Submission Process

(1) In addition to the requirement set out in RFP Section 3.2.1, the following rules shall apply to Respondents when submitting questions or requests for information (collectively referred to as “RFIs”) to Infrastructure Ontario during the RFP Process:

- (a) Respondents are permitted to submit RFIs categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Respondents (“General RFIs”); and
 - (ii) RFIs that the Respondent considers to be commercially sensitive or confidential to that particular Respondent (“Commercially Confidential RFIs”);
- (b) If Infrastructure Ontario disagrees with the Respondent’s categorization of an RFI as a Commercially Confidential RFI, Infrastructure Ontario will give the Respondent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;
- (c) If Infrastructure Ontario determines, in its sole discretion, that an RFI submitted by a Respondent as a Commercially Confidential RFI, even if it is withdrawn in accordance with RFP Section 3.2.2(1)(b), is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Respondents, Infrastructure Ontario may

issue a clarification to Respondents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and

- (d) If Infrastructure Ontario agrees with the Respondent's categorization of a Commercially Confidential RFI, then Infrastructure Ontario will provide a response to that RFI to only the Respondent that submitted the RFI.

(2) Responses to RFIs prepared and circulated by Infrastructure Ontario are not RFP Documents and do not amend the RFP Documents. If, in Infrastructure Ontario's sole discretion, an RFI requires an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.7. 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 Respondent.

(3) Respondents shall submit RFIs in accordance with the deadlines set out in the Timetable. Respondents are permitted to submit RFIs in both Phase 1 and Phase 2 of the RFP Process.

(4) Respondents shall submit all RFIs to the Contact Person by uploading them electronically to the Data Room in accordance with the instructions set out in the RFP Data Sheet.

(5) Infrastructure Ontario will respond to RFIs in written responses circulated to Respondents in accordance with the schedule set out in the Timetable. Infrastructure Ontario may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Respondent who submitted the minor or administrative RFI. Infrastructure Ontario may, in its sole discretion, issue a clarification (that is not in response to a particular RFI) to Respondents at any time during the RFP Process.

(6) It is the Respondent's obligation to seek clarification from Infrastructure Ontario of any matter it considers to be unclear in accordance with this RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. Neither Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team is responsible in any way whatsoever for any misunderstanding by any Respondent or Respondent Team Member of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team.

3.3 Communications Restrictions

3.3.1 Existing Communications with Ontario Power Generation and Bruce Power

Notwithstanding RFP Section 3.3.3, Infrastructure Ontario acknowledges that ongoing or future communications between Respondents and Respondent Team Members and either or both of Ontario Power Generation and Bruce Power may be required as a result of,

- (a) ongoing or future engineering, operations, maintenance, refurbishment, rehabilitation or licensing requirements;

- (b) consultation on ongoing or future environmental assessment processes of any of Ontario Power Generation, Bruce Power A L.P. and Bruce Power L.P. being conducted in support of the deployment of new nuclear units or otherwise required for the ongoing or future activities of any of Ontario Power Generation, Bruce Power A L.P. or Bruce Power L.P.; or
- (c) new nuclear facility development, construction, licensing, commissioning, operation and financing in jurisdictions other than Ontario.

This RFP Section 3.3 is not intended to prohibit day to day communications between the Respondents and Respondent Team Members and either or both of Ontario Power Generation and Bruce Power L.P. that are required for the ongoing or future activities of Ontario Power Generation and Bruce Power, if those communications are not with respect to this RFP Process (which includes the evaluation process). For greater clarity, the purpose of this RFP Section 3.3 is to restrict communications with respect to the RFP Process, the RFP Documents and the Phase 1 and Phase 2 Proposal Submissions only.

3.3.2 Communications with Municipalities, Other Government and Regulatory Authorities and Utilities

(1) Except as set out in RFP Section 3.3.3 and subject to any special rules set out in the RFP Data Sheet, Respondents, Respondent Team Members, and their respective Advisors are permitted to communicate directly with any regulatory agency, municipality, government authority or utility with respect to regulatory, municipal, utility or other types of government requirements related to the Project. Under no circumstances will any special rules set out in the RFP Data Sheet in accordance with this RFP Section 3.3.2(1) override the provisions of RFP Section 3.3.3.

(2) None of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team is, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Respondents, Respondent Team Members, or their respective Advisors receive or believe they may have received from a regulatory agency, municipality, government authority, or utility. Respondents, Respondent Team Members, and their respective Advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team.

3.3.3 Prohibited Contacts and Lobbying Prohibition

(1) Respondents and Respondent 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 3.3.3(1), neither Respondents or Respondent Team Members or any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or the Phase 1 or Phase 2 Proposal Submissions:

- (a) any member of the Government Project Team;
- (b) any employee or representative of,

- (i) Infrastructure Ontario, the Client, Ontario Power Generation or Bruce Power;
- (ii) the Ministry of Finance, the Ontario Financing Authority or PIR; or
- (iii) the Premier of Ontario's Office or the Ontario Cabinet Office;
- (c) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
- (d) any directors, officers or consultants of any entity listed in RFP Section 3.3.3(2)(a) to (c).

(3) If a Respondent or a Respondent Team Member or any of their respective Advisors, employees or representatives, in the opinion of Infrastructure Ontario, contravenes RFP Section 3.3.3(1) or (2), Infrastructure Ontario may, in its sole discretion,

- (a) take any action in accordance with RFP Section 7.1.2; or
- (b) impose conditions on the Respondent's or Respondent Team Member's continued participation in the RFP Process that Infrastructure Ontario considers, in its sole discretion, to be appropriate.

For clarity, Infrastructure Ontario is not obliged to take the actions set out in RFP Section 3.3.3(3)(a) or (b).

3.3.4 Media Releases, Public Disclosures and Public Announcements

(1) A Respondent shall not, and shall ensure that its Advisors, employees, representatives and Respondent Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents, their Phase 1 or Phase 2 Proposal Submissions, or the Project or any matters related thereto, without the prior written consent of Infrastructure Ontario.

(2) Neither the Respondents or the Respondent 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 Respondent or Respondent's Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without Infrastructure Ontario's prior written consent. Respondents, Respondent 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 3.3.4(2) does not prohibit disclosures necessary to permit the Respondent to discuss the Project with prospective Respondent Team Members or subcontractors but disclosure is permitted only to the extent required to solicit those Respondent Team Members' or subcontractors' participation in the Project.

3.3.5 Restrictions on Communications between Respondents – No Collusion

(1) A Respondent shall not discuss or communicate, directly or indirectly, with any other Respondent, any information whatsoever regarding the preparation of its own Phase 1 or Phase 2 Proposal Submission or the Phase 1 or Phase 2 Proposal Submission of the other

Respondent in a fashion that would contravene the Applicable Law. Respondents shall prepare and submit Phase 1 and Phase 2 Proposal Submissions independently and without any knowledge, comparison of information or arrangement, direct or indirect, with any other Respondent.

(2) For greater clarity, RFP Section 3.3.5(1) applies to Respondents and Respondent Team Members and their respective Advisors, subcontractors, employees and representatives.

3.4 Meetings with Respondents and Related Submissions

3.4.1 General Respondents Meetings

(1) Infrastructure Ontario may, in its sole discretion, convene general Respondents meetings (“Respondents Meetings”) on the dates and at the times set out in the Timetable and for the purposes set out in the RFP Data Sheet. Infrastructure Ontario will inform the Respondents of the location of the Respondents meeting by letter. While attendance at a Respondents Meeting is not mandatory, Respondents are strongly encouraged to attend. A Respondent’s failure to attend a Respondents Meeting is at the Respondent’s sole risk and responsibility.

(2) Respondents may ask questions and seek clarifications at the Respondents Meetings. If Infrastructure Ontario gives oral answers at a Respondents Meeting, those answers shall not be considered final unless the Respondent also submits those questions in accordance with RFP Section 3.2.2 for response in accordance with RFP Section 3.2.2.

3.4.2 Commercially Confidential Respondent Meetings

(1) Infrastructure Ontario intends to convene commercially confidential meetings with individual Respondents (“Commercially Confidential Meetings”). These Commercially Confidential Meetings are bilateral meetings between members of the Government Project Team and individual Respondents and may include any of the following types of Commercially Confidential Meetings:

- (a) Phase 1 Commercially Confidential Meetings to discuss technical and commercial Project issues, any issues raised by a Respondent in accordance with RFP Section 1.5, the Phase 2 submission requirements, the Phase 2 evaluation criteria and proposed concepts for the Project Agreement; and
- (b) Phase 2 Commercially Confidential Meetings to discuss the Project Agreement, the Respondent’s suggested amendments to the Project Agreement or any other technical or commercial issues related to the Project, including licensing, scheduling and design readiness issues.

(2) The location of the Commercially Confidential Meetings will be determined by Infrastructure Ontario and the information will be provided to Respondents immediately prior to the meetings. The approximate date and time of Commercially Confidential Meetings is set out in the Timetable.

(3) It is the intention of Infrastructure Ontario to invite the Fairness Monitor to participate in all of the Commercially Confidential Meetings. In the event that the Fairness Monitor or his or her delegate is unable to attend a Commercially Confidential Meeting, Infrastructure Ontario may, in its sole discretion, continue with the Commercially Confidential Meeting, notwithstanding the absence of the Fairness Monitor.

(4) No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meetings by any member of the Government Project Team shall amend or waive any provision of the RFP Documents, or be binding on Infrastructure Ontario, the Client, the Government of Ontario, Ontario Power Generation or Bruce Power or be relied upon in any way by Respondents, Respondent 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 3.7.

(5) Respondents will not be evaluated on either Respondent submissions in respect of Commercially Confidential Meetings or on comments made by the representatives or Advisors of the Respondents or the Respondent Team Members during the Commercially Confidential Meetings. However, Respondents are put on notice that individuals that are members of the Evaluation Committee may, in the sole discretion of Infrastructure Ontario, participate in Commercially Confidential Meetings.

3.4.3 Submissions for Commercially Confidential Meetings

In order to ensure that the Commercially Confidential Meetings proceed in an efficient and effective way, Respondents will be requested to submit materials and agenda items prior to each of the Phase 1 and Phase 2 Commercially Confidential Meetings. These submissions (the “CCM Submissions”) will not be evaluated by Infrastructure Ontario and are for information purposes only. The CCM Submissions are not part of either the Phase 1 or Phase 2 Proposal Submissions. The requested CCM Submissions are set out in Schedules 3 and 7. Infrastructure Ontario will not provide written responses to comments made by Respondents in their CCM Submissions. If Infrastructure Ontario accepts a comment or part of a comment and that acceptance requires a change to the RFP Documents, Infrastructure Ontario shall implement that change by Addendum.

3.5 **Visiting the Existing Facilities**

3.5.1 Scheduled Facility Visits

The dates and times for scheduled visits to the Site or Existing Facilities (“Scheduled Facility Visits”) for all Respondents and their representatives and Advisors, are set out in the Timetable. For clarity, Scheduled Facility Visits will not occur until Phase 2 of the RFP Process and are in addition to any Respondent visits scheduled in accordance with RFP Section 3.5.2.

3.5.2 Additional Facility Visit

(1) Except for Scheduled Facility Visits, Respondents are not permitted to access the Site or the Existing Facilities, for the purpose of this RFP Process, except by prior written arrangement with the Contact Person for each access to the Site or Existing Facilities. The Site and Existing Facilities are described briefly in the RFP Data Sheet and may be described more fully in the Background Information.

(2) A Respondent that wishes to arrange an additional Site or Existing Facilities visit (“Additional Facility Visit”), other than a Scheduled Facility Visit, shall submit a request to the Contact Person at least 10 Business Days prior to the Respondent’s proposed date and time for an Additional Facility Visit. Additional Facility Visits will only be permitted in Phase 2 of the RFP Process. The request shall set out,

- (a) the proposed date and time, and alternate date and time, of the proposed Additional Facility Visit;

- (b) the purpose of the Additional Facility Visit;
- (c) the areas of the Site or Existing Facilities for which access is requested;
- (d) the names, titles, security clearance information and contact information of the Respondent's or Respondent Team Member's representatives who will be attending the Additional Facility Visit; and
- (e) a detailed description of any investigations the Respondent wishes to conduct at the Site or the Existing Facilities.

For greater clarity, any Site or Existing Facilities investigations by a Respondent or a Respondent Team Member shall require the prior consent of the operator of the Site or the Existing Facilities, which consent must be obtained through the Contact Person. The Respondent will not be permitted to conduct the Additional Facility Visit unless it has received approval for and written confirmation of an Additional Facility Visit from the Contact Person. The Respondent and the Respondent Team Members and their representatives shall comply with any instructions provided by the Contact Person and any instructions provided by any Government Project Team representative when conducting the Additional Facility Visit.

3.5.3 Compliance with Site and Existing Facilities Restrictions

Respondents, as a condition of being allowed access to the Site and Existing Facilities, shall comply and shall ensure that their Respondent Team Members and their respective representatives comply with all Site or Existing Facilities policies, procedures and requirements, including security clearance requirements. Respondents acknowledge and agree that the Sites and Existing Facilities are restricted access sites and facilities and access may be denied to any person at any time.

3.6 Respondent Team, Changes to Respondents and Respondent Team Members

3.6.1 Phase 1 Invited Respondents

(1) For Phase 1 of the RFP Process, this RFP requires only the invited Respondents specifically named in RFP Section 1.2(2) to provide information. Respondents are strongly cautioned to note that all information submitted by Respondents in the Phase 1 Proposal Submission must reflect the information of the invited Respondents themselves, and not other associated or affiliated entities of the Respondents unless explicitly required by Schedule 2. Respondents will not be required to identify their Respondent Team Members until Phase 2 of the RFP Process as set out in RFP Section 3.6.2.

3.6.2 Phase 2 - Revisions to the "Respondent" and Establishing the Revised Respondent

(1) Except as provided in RFP Section 3.6.2(2), only those Respondents that submit a Phase 1 Proposal Submission and achieve a "Satisfactory" rating are permitted to submit a Phase 2 Proposal Submission (the "Original Respondents").

(2) In Phase 2, the Original Respondents may, at their option, create a special purpose entity or a consortium (that will meet the requirements of the Project Agreement) to participate in the Phase 2 RFP Process (the "Revised Respondent") and, in the case of the Preferred Vendor, to enter into the Project Agreement, in accordance with the following:

- (a) each Original Respondent must submit the information set out in RFP Section 3.6.2(3) about its Revised Respondent for review and approval by Infrastructure Ontario;
- (b) each Original Respondent must be a shareholder (either directly or indirectly) or consortium member of its Revised Respondent;
- (c) the Construction Manager approved in accordance with RFP Section 3.6.3 may be a shareholder or a consortium member of the Revised Respondent, but is not required to be;
- (d) subject to RFP Sections 3.6.2(2)(f), 3.6.2(3), 3.6.2(4), 3.6.2(5) and 3.6.2(6) the Original Respondent may add other entities as shareholders or consortium members of the Revised Respondent;
- (e) subject to RFP Sections 3.6.2(2)(f), 3.6.2(3), 3.6.2(4), 3.6.2(5) and 3.6.2(6) a Revised Respondent shareholder or a consortium member may itself be a special purpose vehicle;
- (f) the shareholders and/or consortium members of each Revised Respondent must provide the name of proposed parent company guarantors that, individually and as a group of parent company guarantors, will meet the requirements of Section 32.8 of the Project Agreement (which, if the requirements are met, may be the consortium member itself), for review and approval by Infrastructure Ontario (each parent company guarantor will be obliged to provide the Parent Company Guarantee included in the Project Agreement); and
- (g) in the case of a consortium that is the Preferred Vendor, each member of the consortium must execute the Project Agreement and shall be jointly and severally liable under the Project Agreement.

(3) Each Original Respondent must apply to Infrastructure Ontario for approval of the Revised Respondent. The Original Respondent shall apply to the Contact Person for approval of the Revised Respondent no later than the date set out in the Timetable and the application for approval shall clearly identify the names of the proposed entities that would constitute the Revised Respondent shareholders or consortium members, as applicable. The Original Respondent shall provide,

- (a) a description of the main characteristics of the Revised Respondent and the names and addresses of all shareholders or consortium members, as applicable, and their respective shareholdings or roles, as applicable;
- (b) the name of the proposed parent company guarantor of each shareholder or consortium member, a description of the parent company guarantor's relationship to the shareholder or consortium member, and a description of the factors set out in Section 32.8 of the Project Agreement as they apply (or do not apply) to the guarantor; and
- (c) sufficient documentation to demonstrate, to Infrastructure Ontario's satisfaction and by the deadlines for submission established by Infrastructure Ontario, that the new shareholder or consortium member(s) proposed as shareholders of the Revised Respondent, meet or exceed the "financial strength" and "legal position" evaluation criteria

that were applied to the Original Respondent during Phase 1 of the RFP Process.

(4) Infrastructure Ontario may, in its sole discretion, require that a shareholder or consortium member or the Revised Respondent, or both, receive an “acceptable” assessment for a Quality Assurance Preliminary Assessment carried out in accordance with RFP Section 6.6.

(5) If Infrastructure Ontario, in its sole discretion, considers that the proposed Revised Respondent is acceptable, Infrastructure Ontario will inform the Original Respondent of its approval to the Revised Respondent. If Infrastructure Ontario, in its sole discretion, refuses to approve a new shareholder or consortium member, a parent company guarantor or a proposed Revised Respondent, Infrastructure Ontario shall provide the Original Respondent with a reasonable opportunity to suggest an alternative to the first submitted shareholder or consortium member, parent company guarantor or proposed Revised Respondent.

(6) Infrastructure Ontario may, in its sole discretion, conditionally approve a shareholder, consortium member or parent company guarantor (or group of parent company guarantors) or a proposed Revised Respondent subject to compliance with any conditions imposed by Infrastructure Ontario.

(7) For clarity, this RFP Section 3.6.2 does not preclude the use of subcontractors to carry out a portion of the Revised Respondent’s obligations.

(8) For the purposes of this RFP and in respect of Phase 2 of the RFP Process, the expression “Respondent” includes a Revised Respondent that has been approved by Infrastructure Ontario in accordance with this RFP Section 3.6.2.

3.6.3 Identification of the Construction Manager Respondent Team Member

(1) With respect to the identification of Respondent Team Members in the Respondent’s Phase 2 Proposal Submission, other than the identification of all approved shareholder or consortium members, the Respondent is obliged to identify the Respondent Team Member that will have overall responsibility for managing the construction portion of the Project Operations (the “Construction Manager”) and may,

- (a) identify itself as the Construction Manager ;
- (b) identify a shareholder or consortium member (if approved in accordance with RFP Section 3.6.2) as the Construction Manager;
- (c) identify a subcontractor as the Construction Manager; or
- (d) identify any combination of the Respondent, a shareholder or consortium member and/or a subcontractor as bearing the responsibilities of the Construction Manager.

(2) Except as provided in RFP Section 3.6.3(1) and RFP Section 3.6.5(1), the Respondent is not obliged to identify any other Respondent Team Member in its Phase 2 Proposal Submission. For clarity, the Respondent is not obliged to identify its subcontractors or suppliers in its Phase 2 Proposal Submission, unless its Construction Manager is a subcontractor.

(3) All Respondents’ proposed Construction Managers, (whether the Original Respondent, a shareholder or consortium member or a subcontractor) must be approved by

Infrastructure Ontario to act as the Construction Manager prior to the submission of a Respondent's Phase 2 Proposal Submission. In order to receive this approval from Infrastructure Ontario, the Respondent shall apply to the Contact Person for approval no later than the date set out in the Timetable and the application for approval shall clearly identify the name of the proposed Construction Manager. At the request of Infrastructure Ontario, the Respondent shall provide sufficient documentation to demonstrate, to Infrastructure Ontario's satisfaction and by the deadlines for submission established by Infrastructure Ontario, that the proposed Construction Manager is satisfactory.

(4) If Infrastructure Ontario, in its sole discretion, refuses to approve the proposed Construction Manager, Infrastructure Ontario shall provide the Respondent with a reasonable opportunity to suggest an alternative to the first Construction Manager proposed.

3.6.4 Shareholder or Consortium Members and Subcontractors – Participation on Multiple Respondent Teams

(1) A shareholder or consortium member (including Fuel Co) shall not participate, in any way whatsoever, on more than one Respondent Team. For clarity, a shareholder or consortium member (including Fuel Co) shall not participate as a shareholder or consortium member on one Respondent Team and as a subcontractor on another Respondent Team.

(2) A Respondent's subcontractors, including a Construction Manager that is a subcontractor (but, for clarity, not a Construction Manager that is a shareholder or consortium member and not Fuel Co) may participate on more than one Respondent Team subject to the following conditions:

- (a) the subcontractor shall not breach RFP Section 3.3.5;
- (b) the subcontractor shall establish separate and independent teams, with no overlap whatsoever, for each Respondent Team in which it participates;
- (c) each subcontractor team shall establish "ethical walls" between it and the other subcontractor team(s) and shall not communicate in any way whatsoever with the other subcontractor team(s);
- (d) each subcontractor team shall establish strict document confidentiality protocols to ensure that all documents prepared in contemplation of participation in the RFP Process are inaccessible to the other teams; and
- (e) no two subcontractor teams shall report to the same individual for the purpose of approval of any aspect of the subcontractor team's contribution to a Respondent's Phase 2 Proposal Submission, including, for clarity, approval of a subcontractor's prices.

3.6.5 Identification and Approval of Fuel Co

(1) The Respondent shall identify the Respondent Team Member that will enter into the Fuel Agreement with Client and carry out the obligations set out in the Fuel Agreement ("Fuel Co"). The Respondent may,

- (a) identify itself as Fuel Co; or
- (b) identify a shareholder or consortium member (if approved in accordance with RFP Section 3.6.2) as Fuel Co.

(2) The Respondent must apply to Infrastructure Ontario for approval of the proposed Fuel Co. The Respondent shall apply to the Contact Person for approval of Fuel Co no later than the date set out in the Timetable and the application for approval shall clearly set out,

- (a) a description of the main characteristics and shareholding of Fuel Co; and
- (b) the name and description of the proposed parent company guarantor of Fuel Co and a description of the guarantor's relationship to Fuel Co.

(3) If Infrastructure Ontario, in its sole discretion, refuses to approve the proposed Fuel Co, Infrastructure Ontario shall provide the Respondent with a reasonable opportunity to suggest an alternative to the first Fuel Co proposed.

(4) Infrastructure Ontario may, in its sole discretion, require that Fuel Co receive an "acceptable" assessment for a Quality Assurance Preliminary Assessment carried out in accordance with RFP Section 6.6.

3.6.6 Pre-Approval of Key Subcontractors

(1) A Respondent may submit the names and descriptions of any of its Key Subcontractors (as Key Subcontractors is defined in the Project Agreement) that it wishes to be pre-approved prior to the submission of its Phase 2 Proposal Submission. The Respondent is permitted to submit more than one name for the same Key Subcontractor role and to have more than one name approved.

(2) In order to receive Key Subcontractor pre-approval from Infrastructure Ontario, the Respondent shall apply to the Contact Person no later than the date set out in the Timetable and the application for pre-approval shall clearly identify the name of the proposed Key Subcontractor and a description of the goods or services to be provided by the proposed Key Subcontractor. At the request of Infrastructure Ontario, the Respondent shall provide sufficient documentation to demonstrate, to Infrastructure Ontario's satisfaction and by the deadlines for submission established by Infrastructure Ontario, that the proposed Key Subcontractor is satisfactory in accordance with the terms and conditions of the Project Agreement.

(3) If Infrastructure Ontario, does not approve the proposed Key Subcontractor, Infrastructure Ontario shall provide the Respondent with a reasonable opportunity to suggest an alternative to the Key Subcontractor that was originally proposed.

(4) If a Key Subcontractor is pre-approved in accordance with this RFP Section 3.6.6, it shall be deemed to be an approved Key Subcontractor for the purposes of the Project Agreement.

3.7 Addenda/Changes to the RFP Documents

(1) Infrastructure Ontario may, in its sole discretion, amend or supplement the RFP Documents prior to the applicable Submission Deadline. Infrastructure Ontario shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by Infrastructure Ontario or any member of the Government Project Team including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The approximate final dates that Infrastructure Ontario will issue Addenda particular to Phase 1 and Phase 2 of the RFP Process are set out in the Timetable. Infrastructure Ontario may issue Addenda to amend any deadline in the Timetable at any time before the expiration of the applicable deadline.

(2) The Respondent is solely responsible to ensure that it has received all Addenda issued by Infrastructure Ontario. Respondents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.

(3) Infrastructure Ontario shall issue Addenda in accordance with RFP Section 2.3(3).

(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 3.7.

3.8 Freedom of Information and Confidentiality Matters

3.8.1 Confidentiality of Respondents' Proposals

(1) Except as provided in RFP Sections 3.8.2, 3.8.3 and 3.8.4, Infrastructure Ontario shall not disclose information from the Respondents' Proposals, CCM Submissions or Commercially Confidential Meetings which would otherwise be exempt from disclosure pursuant to the Freedom of Information and Protection of Privacy Act (Ontario) ("FIPPA"). Infrastructure Ontario and each of the Respondents will enter into the confidentiality agreement attached as Schedule 9 to this RFP ("Respondent's Confidentiality Agreement"). The Respondent's Confidentiality Agreement is intended to support the Respondents' rights as set out in this RFP Section 3.8.1, is independent of any Confidentiality Agreement required by Infrastructure Ontario in accordance with RFP Section 3.8.5, and shall not in any way limit any of the provisions of this RFP.

3.8.2 Infrastructure Ontario Disclosures

(1) Infrastructure Ontario may, in its sole discretion, publicly disclose the following information:

- (a) the names of the Respondents (including the shareholder or consortium members) and Fuel Co;
- (b) the names of the Respondents who receive or fail to receive a "Satisfactory" rating in Phase 1 of the RFP Process;
- (c) the names of the Negotiations Respondents;
- (d) the name of the Preferred Vendor and Fuel Co;
- (e) a redacted version of the executed Project Agreement;
- (f) a redacted version of the executed Fuel Agreement; and
- (g) the prices of the Preferred Vendor.

3.8.3 Freedom of Information and Protection of Privacy Act

(1) Respondents are advised that Infrastructure Ontario, the Client, Ontario Power Generation and the Government of Ontario may be required to disclose the RFP Documents and a part or parts of any Proposal (either the Phase 1 or Phase 2 Proposal Submissions) pursuant to FIPPA.

(2) Respondents are also advised that FIPPA deals explicitly with the treatment of trade secrets and confidential and proprietary business information. Respondents are strongly

advised to consult their own legal Advisors as to the appropriate way in which trade secrets, confidential or proprietary business information should be marked as such in their Proposals and the protections which are and are not available under FIPPA for these types of information.

(3) Subject to the provisions of FIPPA, Infrastructure Ontario will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Respondent as confidential but shall not be liable in any way whatsoever to any Respondent or Respondent Team Member if such information is disclosed based on an order or decision of the Information and Privacy Commissioner, a Court, or otherwise as required under the Applicable Law.

3.8.4 Distribution of Respondents' Proposals and Other Information

(1) Respondents acknowledge and agree that Infrastructure Ontario may, in its sole discretion, copy and distribute both the Phase 1 and Phase 2 Proposal Submissions, CCM Submissions and any other information submitted by Respondents, to members of the Government Project Team, provided that the distribution of the Phase 1 and Phase 2 Proposal Submissions, CCM Submissions and other information submitted is done on an "as-needed" basis and is limited to those individuals who are participating in the preparation of responses to RFIs, the evaluation of the Respondents' Phase 1 or Phase 2 Proposal Submissions, the decision-making process to identify the Negotiations Respondent(s) and Preferred Vendor, or who are participating in the negotiation, approval or decision-making process related to the Project Agreement.

3.8.5 Confidentiality Agreements

(1) Infrastructure Ontario may require each prospective Respondent to execute and deliver to Infrastructure Ontario a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to Infrastructure Ontario. To the extent that the provisions of the confidentiality agreements are inconsistent or conflict with the requirements of RFP Section 3.8.6, the more stringent confidentiality obligation shall govern.

3.8.6 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 and including all Background Information, supplied by, obtained from or otherwise provided by Infrastructure Ontario, the Client, the Government of Ontario, Ontario Power Generation or Bruce Power in connection with the RFP Process, the RFP Documents or the Project, whether supplied, obtained from or provided before or after the RFP Process.

(2) The Respondent agrees that all Confidential Information:

- (a) shall remain the sole property of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power or the Government of Ontario, as applicable, and the Respondent shall treat it as confidential;
- (b) shall not be used by the Respondent for any other purpose other than developing and submitting a Phase 1 or Phase 2 Proposal Submission or CCM Submissions in response to this RFP Process or the performance of any subsequent agreement relating to the Project, as applicable;
- (c) shall not be disclosed by the Respondent to any person who is not involved in the Respondent's preparation of its Phase 1 or Phase 2

Proposal Submission, CCM Submissions, negotiation of the Project Agreement or the performance of any subsequent agreement relating to the Project, without the prior written consent of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power or the Government of Ontario, as applicable;

- (d) shall not be used in any way detrimental to Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power or the Government of Ontario; and
- (e) if requested by Infrastructure Ontario, shall be returned by the Respondents to Infrastructure Ontario no later than ten calendar days after that request.

(3) Each Respondent shall be responsible for any breach of the provisions of this RFP Section 3.8.6 by any person to whom it discloses the Confidential Information including, for greater clarity, the Respondent's employees, representatives and Advisors and the Respondent Team Members and their employees, representatives and Advisors. Each Respondent shall indemnify each of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario, the Government Project Team and 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 3.8.6 by the Respondent or by any person to whom the Respondent has disclosed the Confidential Information.

(4) Each Respondent agrees that Infrastructure Ontario acts as trustee for the Client, Ontario Power Generation, Bruce Power, the Government of Ontario, the Government Project Team and for each of their related entities and their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated by this RFP Section 3.8.6 arising in favour of a related entity or the Client, Ontario Power Generation, Bruce Power, Government of Ontario or the Government Project Team or any of their respective directors, officers, consultants, employees, agents or representatives and that Infrastructure Ontario has agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team and each of their respective directors, officers, consultants, employees, agents and representatives.

(5) Each Respondent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8.6 would cause Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario, the Government Project Team and their related entities to suffer loss that could not be adequately compensated by damages, and that Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario, the Government Project Team and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8.6 upon application to a court of competent jurisdiction without proof of actual damage to Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario, the Government Project Team or any of their related entities.

(6) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.8.6 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 Respondents who receive a

copy of this RFP or have access to the Data Room, whether or not they submit Proposal documents in response to Phase 1 or Phase 2 of the RFP Process.

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

3.9 Conflict of Interest and Ineligible Respondent Team Members and Advisors

3.9.1 Conflict of Interest

(1) If a Respondent, a Respondent Team Member, or any of their respective Advisors, prior to or following submission of the Respondent's Phase 1 or Phase 2 Proposal Submission, discovers any perceived, potential or actual Conflict of Interest that the Respondent, Respondent Team Members or any of their Advisors may have with any one or more of,

- (a) Infrastructure Ontario or any of Infrastructure Ontario's board members;
- (b) the Client, PIR, the Ministry of Finance, the Ontario Financing Authority or the Government of Ontario;
- (c) Ontario Power Generation or any of Ontario Power Generation's board members; or
- (d) Bruce Power or any member of Bruce Power's boards of directors,

the Respondent shall promptly disclose the perceived, potential or actual Conflict of Interest to Infrastructure Ontario in a written statement to the Contact Person.

(2) In addition to the disclosure to be made in accordance with RFP Section 3.9.1(1), Respondents and Respondent Team Members and each of their Advisors, shall disclose, in the Respondent's Phase 2 Proposal Submission Forms, all perceived, potential and actual Conflicts of Interest any one of them may have with any one or more of Infrastructure Ontario, any of Infrastructure Ontario's board members, the Client, PIR, the Ministry of Finance, the Ontario Financing Authority, Ontario Power Generation, any of Ontario Power Generation's board members, Bruce Power, any member of Bruce Power's boards of directors or the Government of Ontario.

(3) On the request by Infrastructure Ontario, the Respondent shall provide Infrastructure Ontario with the Respondent's proposed means to manage, mitigate or minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Respondent shall submit any additional information to Infrastructure Ontario that Infrastructure Ontario considers necessary to properly assess the perceived, potential or actual Conflict of Interest.

(4) Infrastructure Ontario may, in its sole discretion, exclude any Respondent Team Member or Respondent Advisor on the grounds of any perceived, potential or actual Conflict of Interest.

(5) Without limiting the generality of RFP Section 3.9.1(4) or (6), Infrastructure Ontario may, in its sole discretion, require the Respondent, Respondent Team Member or their respective Advisors to substitute a new person or entity for the person or entity giving rise to the perceived, potential or actual Conflict of Interest.

(6) Infrastructure Ontario may, in its sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of Respondents or Respondent Team Members, or any of their respective Advisors. A waiver shall be upon such terms and conditions as Infrastructure Ontario, in its sole discretion, requires to satisfy itself that the perceived, potential or actual Conflict of Interest has been appropriately managed, mitigated or minimized, including requiring the Respondent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to Infrastructure Ontario, in its sole discretion, to manage, mitigate or minimize the impact of such perceived, potential or actual Conflict of Interest.

(7) For the purposes of this RFP Process "Conflict of Interest" includes any situation or circumstance where, in relation to the Project, the Respondent's or any Respondent Team Member's or their respective Advisors' other commitments, relationships or financial interests,

- (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of independent judgment by any personnel of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power or the Government Project Team; or
- (b) could or could be seen to compromise, impair or be incompatible with the effective performance of a Respondent's obligations under the Project Agreement if that Respondent was determined to be the Preferred Vendor under the RFP Process.

3.9.2 Ineligible Respondent Team Members

(1) As a result of their involvement in the Project, the persons named in the RFP Data Sheet as "Ineligible Persons", their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of this Project and, subject to RFP Sections 3.9.2(3) and 3.9.2(4), any person controlled by, that controls or that is under common control with the Ineligible Persons (each an "Ineligible Persons Affiliate"), are not eligible to participate as Respondent Team Members or Respondent Advisors (in this RFP Process).

(2) Infrastructure Ontario may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.

(3) An Ineligible Persons Affiliate may be eligible to participate as a Respondent Team Member or a Respondent Advisor only after it has obtained a written consent from

Infrastructure Ontario permitting it to participate as a Respondent Team Member or Respondent Advisor. To obtain consent for an Ineligible Persons Affiliate to participate as a Respondent Team Member or Respondent Advisor the Respondent must submit a request for consent to the Contact Person that includes the following information:

- (a) the full legal name of the Ineligible Persons Affiliate that the Respondent wishes to include on its team or as a Respondent Advisor;
- (b) information regarding the Ineligible Persons 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 potential Conflict of Interest with respect to the Ineligible Persons Affiliate.

(4) Upon the Contact Person's receipt of a Respondent's properly completed request for consent in accordance with RFP Section 3.9.2(3), Infrastructure Ontario shall, in its sole discretion, make a determination as to whether it considers there to be a real, perceived or potential Conflict of Interest and whether the impact of such real, perceived or potential Conflict of Interest can be appropriately managed, mitigated or minimized. The Respondent shall be notified of Infrastructure Ontario's 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 Persons Affiliate is considered to have a Conflict of Interest the impact of which cannot be properly managed, mitigated or minimized, the Ineligible Persons Affiliate shall be added, by Infrastructure Ontario, to the Ineligible Persons list, by Addendum.

3.10 Respondent Costs

(1) The Respondents and the Respondent 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 Respondents' involvement in,

- (a) the preparation, presentation and submission of its Phase 1 and Phase 2 Proposal Submission;
- (b) attendance at Respondents Meetings, Commercially Confidential Meetings or at any meeting with Infrastructure Ontario;
- (c) the preparation of CCM Submissions;
- (d) due diligence and information gathering processes;
- (e) Scheduled Facility Visits and Additional Facility Visits;
- (f) the preparation of responses to questions or requests for information from Infrastructure Ontario;
- (g) the preparation of the Respondent's own RFIs during the clarification process, the Respondent's requests for consent from Infrastructure Ontario and any other communications prepared by the Respondent during the RFP Process; and
- (h) negotiations, if any.

(2) Except as explicitly provided in RFP Sections 10.3.2 and 10.4.2(1), Infrastructure Ontario is not liable to pay any costs or expenses of any Respondent or to reimburse or compensate a Respondent under any circumstances, regardless of the outcome of the RFP Process.

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

(1) During the RFP Process, the Respondent is required to obtain, and at all times keep and maintain in force the insurance as set out in RFP Sections 3.11.1(1)(a) and (b), whenever the Respondent, a Respondent Team Member, or any of their respective directors, officers, employees, consultants, Advisors or agents or representatives are present at the Site or Existing Facilities or at any facilities or premises of Infrastructure Ontario, the Client, Ontario Power Generation or Bruce Power for any purpose whatsoever:

- (a) Comprehensive General Liability insurance, having an inclusive limit of not less than \$10,000,000 for each occurrence or accident and covering all sums which the Respondent may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations carried out in connection with this RFP or RFP Process. The policy shall have added as additional named or unnamed insureds each of Her Majesty the Queen in right of Ontario (including the Ontario Financing Authority), the Client, PIR, the Ministry of Finance, Ontario Power Generation, Bruce Power and Infrastructure Ontario (and each of their respective directors, officers, employees consultants and agents), and an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power or the Government of Ontario; and
- (b) Vehicle Public Liability and Property Damage insurance, in the amount of not less than \$2,000,000 per occurrence, for vehicles used by Respondents or Respondent Team Members (or their respective directors, officers, employees, consultants, Advisors and agents) while on or at the Site or Existing Facilities or on or at any facilities or premises owned or leased by Infrastructure Ontario, the Client, Ontario Power Generation or Bruce Power L.P. or Bruce Power A L.P.

(2) As a condition of allowing access to the Site or Existing Facilities or to the facilities or premises of the Client or Infrastructure Ontario, Infrastructure Ontario reserves the right to require Respondents to provide evidence acceptable to Infrastructure Ontario that the insurance required by RFP Section 3.11.1(1)(a) and (b) is in place.

(3) If a Respondent proposes to perform any investigations at the Site or Existing Facilities, the risk related to which may not be fully insured under the policies set out in RFP Section 3.11.1(1), Infrastructure Ontario may, in its sole discretion, require the Respondent, at its own cost, to obtain insurance additional to that specified in RFP Sections 3.11.1(1)(a) and (b).

(4) All insurance policies required to be obtained by Respondents shall provide that the insurance shall not be cancelled (including lapses and expiration), reduced, restricted,

modified or changed in any way without the insurer giving at least 60 calendar days prior written notice to Infrastructure Ontario.

3.11.2 Workplace Safety during the RFP Process

(1) As a condition of allowing access to the Site or Existing Facilities or any facilities or premises of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power L.P. or Bruce Power A L.P., Infrastructure Ontario may, in its sole discretion, require Respondents to provide evidence acceptable to Infrastructure Ontario, the Client, Ontario Power Generation or Bruce Power, as applicable, that the Respondent and its Respondent Team Members are registered with the Workplace Safety Insurance Board of Ontario, if such registration is required under the Applicable Law, or, if such registration is not required under the Applicable Law, to provide evidence acceptable to Infrastructure Ontario that the Respondent and its Respondent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to Infrastructure Ontario.

3.12 Escalation Indices

(1) No later than the submission deadline set out in the Timetable, each Respondent shall submit, for prior review and approval by Infrastructure Ontario, all Escalation Indices (as defined in the Project Agreement) that it may wish to use in its Phase 2 Proposal Submission (the "Escalation Indices Submission"). Respondents shall use the form attached as Attachment 2 to the RFP Data Sheet to submit their proposed Escalation Indices.

(2) All Escalation Indices proposed by Respondents shall meet the following requirements:

- (a) each index proposed must be an index that is tied to a commodity or equipment used in either a Firm or Target Price Sub-Category;
- (b) each index proposed must have at least 10 years of monthly or 20 years of quarterly historical data;
- (c) each index proposed must be publicly available from a government or other respected industry source; and
- (d) each index proposed must be sufficiently liquid so that there are few occurrences of stale prices.

(3) If Infrastructure Ontario rejects a proposed Escalation Index, the Respondent shall be given an opportunity to submit a replacement index, which index is to be submitted no later than the deadline provided by Infrastructure Ontario at the time of the rejection.

3.13 Supplementary Submission Requirements

(1) Infrastructure Ontario may, in its sole discretion and by notice provided to Respondents no later than the deadline set out in the Timetable, require the Negotiations Respondent(s) to, prior to the execution of the Project Agreement, advance the performance of certain obligations that would otherwise be required to be performed under Schedule 15 to the Project Agreement and, in particular,

- (a) submit information and documentation to OPG in respect of "Interpretation and Provision of Required Information" obligations, in accordance with Schedule 15 to the Project Agreement, and, in particular as described in Attachment A to Appendix A to Schedule 15 (collectively,

the “Advance Environmental Assessment and Site Preparation Information”); and

- (b) to carry out those tasks that would otherwise be Project Co’s responsibility under Schedule 15 to the Project Agreement in connection with the Application Submissions for the EA Approval and CNSC Site Preparation Licence.

If Infrastructure Ontario requires that the Negotiation Respondent(s) submit the Advance Environmental Assessment and Site Preparation Information, the deadline for submission of the Advance Environmental Assessment and Site Preparation Information shall be no earlier than June 19, 2009, provided that the Negotiations Respondent(s) will be required to provide any readily available information and documentation as soon as possible after notification by Infrastructure Ontario in accordance with this RFP Section 3.13(1).

(2) In the event that Infrastructure Ontario requires the Negotiations Respondent(s) to submit Advance Environmental Assessment and Site Preparation Information or to carry out work in accordance with RFP Section 3.13(1), it shall pay compensation to the Negotiations Respondent(s) that do not enter into the Project Agreement in an amount equal to the reasonable and documented costs and expenses of that Negotiations Respondent in connection with the performance of its obligations under RFP Section 3.13(1) to a maximum amount of \$1,000,000. For the purpose of greater clarity, in connection with the performance of its obligations under RFP Section 3.13(1), compensation to a Negotiations Respondent that enters into the Project Agreement shall be paid as provided for under the Project Agreement.

(3) For the purpose of greater clarity, Advance Environmental Assessment and Site Preparation Information, if submitted by the Negotiations Respondent(s), is not evaluated for the purposes of the RFP Process.

(4) Any Site due diligence or investigations that Negotiations Respondents may carry out in connection with RFP Section 3.13(1) must be carried out in accordance with RFP Sections 3.5.2(2) and 3.5.3 and Notice 24, Site Due Diligence Protocol.

(5) For greater clarity, nothing in this RFP Section 3.13 restricts OPG’s ability to communicate with Respondents pursuant to RFP Section 3.3.1.

SECTION 4– PROPOSAL – FORM AND CONTENT REQUIREMENTS

4.1 Purpose of Phase 1 and Phase 2 of the RFP Process and General Submission Requirements

4.1.1 Phase 1 of the RFP Process – Purpose of Phase 1

- (1) The purposes of Phase 1 of the RFP Process are,
 - (a) to establish whether a Respondent, on a Satisfactory/Unsatisfactory basis, has the capability to execute a plan to provide the support necessary for a successful construction licence application, is able to deliver a successful Canadian safety case on schedule and in compliance with Canadian regulatory requirements, is willing and capable to deliver the Project, and has acceptable financial strength and legal position (existing claims and history of offences) all as set out in Schedule 2;

- (b) to convene Commercially Confidential Meetings with Respondents to discuss the CCM Submissions identified in Schedule 3 and other agenda items identified by Infrastructure Ontario; and
- (c) to provide Respondents with as much advance information as currently available on the submission requirements for their Phase 2 Proposal Submissions.

4.1.2 Phase 2 of the RFP Process – Purpose of Phase 2

- (1) The purposes of Phase 2 of the RFP Process are,
 - (a) to review Respondents' detailed Phase 2 Proposal Submissions with respect to the evaluation criteria established for Phase 2 of the RFP Process;
 - (b) to convene Commercially Confidential Meetings with Respondents to discuss the CCM Submissions identified in Schedule 7 and other agenda items identified by Infrastructure Ontario;
 - (c) to receive further input on Project issues identified in Schedule 7 and to receive input on the proposed Project Agreement; and
 - (d) to identify a Preferred Vendor (or in some cases a Negotiations Respondent or Negotiations Respondents and then a Preferred Vendor) for the purposes of finalizing and executing a Project Agreement and a Fuel Agreement in the same form and substance as the Project Agreement and a Fuel Agreement which are attached as Schedule 12 to this RFP, subject to RFP Section 8.1.
- (2) It is the intention of Infrastructure Ontario to issue a preliminary draft of the Project Agreement at the time of issuance of Schedules 6 to 12 in accordance with RFP Section 2.1(3)(b) and to re-issue a revised Project Agreement prior to the Phase 2 Submission Deadline.

4.1.3 Format and Content of the Phase 1 and Phase 2 Proposal Submissions

- (1) Each Respondent shall prepare and submit its Phase 1 Proposal Submission organized in accordance with and in the format set out in Schedule 2 and containing the required information set out in Schedule 2.
- (2) Each Respondent shall prepare and submit its Phase 2 Proposal Submission organized in accordance with and in the format set out in Schedule 6 and Schedule 11 and containing the required information set out in Schedule 6 and Schedule 11.

SECTION 5 – SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

5.1 Submission of Phase 1 or Phase 2 Proposal Submission

- (1) Each Respondent shall submit one original and 25 copies of each of its Phase 1 Proposal Submission and its Phase 2 Proposal Submission (as applicable) before the applicable Submission Deadline. Each of the original and copies shall be marked as either "Original" or "Copy 1 of 25", "Copy 2 of 25", etc. Respondents shall mark all submissions with

the RFP name and number and the name of the Contact Person. For the purposes of this RFP Process, the determination of whether the Proposal is submitted before the applicable Submission Deadline shall be based on the time and date stamp the Respondent must ensure it receives from Infrastructure Ontario at the address for submission set out in the RFP Data Sheet. Phase 1 or Phase 2 Proposal Submissions received after the applicable Submission Deadline, as documented by the applicable time and date stamp, shall be returned unopened to the sender.

(2) Respondents shall submit their Phase 1 and Phase 2 Proposal Submissions by sending them by pre-paid courier or hand delivery to Infrastructure Ontario at the address set out in the RFP Data Sheet. It is the sole responsibility of the Respondent to ensure that the Phase 1 or Phase 2 Proposal Submission is received by Infrastructure Ontario prior to the applicable Submission Deadline and to ensure it receives a date and time stamp receipt from Infrastructure Ontario confirming the timely delivery of the Phase 1 and Phase 2 Proposal Submissions.

(3) Respondents shall provide both hard and electronic copies of Proposals in accordance with Schedule 2 and Schedule 6. Infrastructure Ontario will not accept Phase 1 or Phase 2 Proposal Submissions delivered by electronic mail or by facsimile.

(4) If there is any difference between the original and the copies of the Proposal, the original shall govern. If there is any difference whatsoever between the electronic copy of a Proposal and the original, the original of the Proposal, as submitted in hard copy, shall govern.

5.2 Withdrawal of Phase 1 or Phase 2 Proposal Submissions

A Respondent may withdraw its Phase 1 or Phase 2 Proposal Submission only by giving written notice, before the applicable Submission Deadline, to the Contact Person. Infrastructure Ontario will return, unopened, a Phase 1 or Phase 2 Proposal Submission that has been withdrawn in accordance with this RFP Section 5.2.

5.3 Amendment of Phase 1 or Phase 2 Proposal Submission

Respondents may amend their Phase 1 or Phase 2 Proposal Submissions after submission but only if the Phase 1 or Phase 2 Proposal Submission is resubmitted before the applicable Submission Deadline in accordance with the following:

- (a) the Respondent shall withdraw its original Phase 1 or Phase 2 Proposal Submission by notifying the Contact Person in writing before the applicable Submission Deadline; and
- (b) the Respondent shall submit a revised replacement Phase 1 or Phase 2 Proposal Submission in accordance with the RFP Documents and before the applicable Submission Deadline in accordance with the requirements of RFP Section 5.1.

5.4 Proposal Irrevocability

(1) Except as provided in RFP Section 5.4(3) and RFP Section 5.4(4) and subject to the Respondent's right to withdraw a Proposal before the applicable Submission Deadline, each Proposal (for clarity, each of the Phase 1 and Phase 2 Proposal Submissions) shall be irrevocable and shall remain in effect and open for acceptance for 180 days after the Phase 2 Submission Deadline (the "Proposal Validity Period") or until the Project Agreement Effective Date, whichever occurs first.

(2) If Infrastructure Ontario wishes to extend the Proposal Validity Period, Infrastructure Ontario shall submit a request to extend to those Respondents that are still under consideration in the RFP Process. A Respondent may, in its discretion, refuse to extend the Proposal Validity Period in accordance with the following:

- (a) Notwithstanding a Respondent's refusal to extend the Proposal Validity Period, that Proposal shall continue to be valid in accordance with the original Proposal Validity Period; and
- (b) If Infrastructure Ontario determines that it will be unable to determine the Preferred Vendor or reach the Project Agreement Effective Date prior to the expiration of the original Proposal Validity Period, Infrastructure Ontario may discontinue the evaluation or consideration of a Respondent or may discontinue negotiations with a Negotiations Respondent or finalization of the Project Agreement with a Preferred Respondent if that Respondent has refused Infrastructure Ontario's request to extend the Proposal Validity Period and may continue the RFP Process with only those Respondents that have consented to an extension of the Proposal Validity Period.

(3) In respect of the Preferred Vendor, Infrastructure Ontario shall be considered to have accepted the Preferred Vendor's Proposal prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable) if the Client and the Preferred Vendor execute the Project Agreement prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable). For greater clarity and except as provided in RFP Section 5.4(4), the Preferred Vendor shall maintain its financial submission as set out in its Financial Submission Form until the Project Agreement Effective Date or the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable), whichever is earlier.

(4) Despite RFP Section 5.4(2), if, during the course of negotiations between a Negotiations Respondent and Infrastructure Ontario, the Negotiations Respondent submits a revised financial submission to Infrastructure Ontario or agrees to revised terms and conditions of the Project Agreement or the Negotiations Respondent's Proposal prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable), that Negotiations Respondent is deemed to have agreed to an extension of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable) for a period of 120 days after the date of submission of the revised financial submission or the date of agreement to any revised terms and conditions, as applicable.

SECTION 6 – EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

6.1 Evaluation Committee and Advisors

(1) Infrastructure Ontario will establish an evaluation committee (the "Evaluation Committee") for the purpose of evaluating Proposals in accordance with the RFP Documents. Infrastructure Ontario, in its sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. Respondents acknowledge that members of the Evaluation Committee may include individuals who interact with Respondents or Respondent Team Members in a manner permitted by RFP Section 3.3.1. Infrastructure Ontario may establish a different Evaluation Committee for Phase 1 of the RFP Process than for Phase 2 of the RFP Process. The Evaluation Committee may be assisted by and receive advice from any member of the Government Project Team.

(2) If a member of the Evaluation Committee becomes unable to continue serving on an Evaluation Committee before the completion of a “Step” in the evaluation process (as set out in RFP Sections 6.4 and 6.5), the evaluation comments and, if applicable, the scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee member becomes unable to continue serving on the Evaluation Committee after the full completion of a “Step” of the evaluation process (as set out in RFP Sections 6.4 and 6.5), the results of the completed Step of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee member, in these circumstances, is replaced is in the sole discretion of Infrastructure Ontario.

6.2 Infrastructure Ontario Clarification and Verification of Proposals

- (1) Infrastructure Ontario may,
- (a) contact any third party to verify the assertions made in any Proposal;
 - (b) require the Respondent to clarify or verify the contents of either or both of its Phase 1 or Phase 2 Proposal Submissions or any statement made by the Respondent;
 - (c) require the Respondent to submit supplementary documentation clarifying or verifying any matters contained in its Phase 1 or Phase 2 Proposal Submission;
 - (d) seek a Respondent’s acknowledgement of Infrastructure Ontario’s interpretation of either or both of its Phase 1 or Phase 2 Proposal Submission or any part thereof; and
 - (e) independently verify if the Respondent or any Respondent Team Member is in full compliance with all statutes administered by the Ministry of Finance or any other Ministry of the Government of Ontario.

(2) Infrastructure Ontario is not obliged to seek clarification or verification of any aspect of a Phase 1 or Phase 2 Proposal Submission or any statement by a Respondent, including an ambiguity in a Phase 1 or Phase 2 Proposal Submission or in a statement made by a Respondent.

(3) Any written information received by Infrastructure Ontario from a Respondent pursuant to a request for clarification or verification from Infrastructure Ontario as part of the RFP Process may, in Infrastructure Ontario’s sole discretion, be considered as an integral part of Phase 1 or Phase 2 Proposal Submission, as applicable.

6.3 Infrastructure Ontario’s Approach to Compliance

(1) For purposes of this RFP, “comply” and “compliance” mean that the Phase 1 or Phase 2 Proposal Submission, as applicable, conforms to the applicable requirements of the RFP Documents without material deviation. A “material deviation” in a Phase 1 or Phase 2 Proposal Submission is any failure to comply with an RFP Document requirement that, in the sole discretion of Infrastructure Ontario,

- (a) impedes, in any material way, the ability of Infrastructure Ontario to evaluate the submission;

- (b) materially affects Infrastructure Ontario's ability to enforce the Respondent's or Preferred Vendor's obligations pursuant to the RFP Documents; or
- (c) constitutes an attempt by the Respondent to materially revise Infrastructure Ontario's or the Respondent's rights or obligations under the RFP Documents in a way not permitted by the RFP.

(2) A requirement in this RFP or in Schedules 2, 3, 6, 7, or 11 that a Respondent "must" or "shall" do anything is not intended to supersede RFP Section 6.3(1) or, for greater clarity, to supersede the concepts of "comply", "compliance" or "material deviation" set out in this RFP Section 6.3.

(3) A Respondent's submission of a complete but poor quality Phase 1 or Phase 2 Proposal Submission shall not be considered a failure to comply but may affect the Respondent's evaluated score or ranking or whether, in Phase 1 of the RFP Process, the Respondent's Phase 1 Proposal Submission is determined to be "Satisfactory".

(4) If, during Step 1 of the evaluation process for either Phase 1 or Phase 2 of the RFP Process (the compliance reviews) or at any time during the RFP Process, Infrastructure Ontario determines that a Phase 1 or Phase 2 Proposal Submission is non-compliant pursuant to this RFP Section 6.3, Infrastructure Ontario may, in its sole discretion, declare the Phase 1 or Phase 2 Proposal Submission to be non-compliant and the Proposal shall not be given any further consideration. For clarity, CCM Submissions are not evaluated and are not subject to a requirement of compliance with the RFP Documents.

(5) For the purpose of clarity, each Respondent acknowledges and agrees that Infrastructure Ontario's evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that Infrastructure Ontario may waive failures to comply that, in Infrastructure Ontario's sole discretion, do not constitute a material deviation in accordance with this RFP Section 6.3. For clarity, Infrastructure Ontario may also waive a material deviation under RFP Section 6.3(6).

(6) Infrastructure Ontario may, in its sole discretion, waive a material deviation in either a Phase 1 or Phase 2 Proposal Submission and, therefore, waive a material failure to comply with the requirements of the RFP Documents. Infrastructure Ontario may, in its sole discretion, decline to disqualify a non-compliant Phase 1 or Phase 2 Proposal Submission.

6.4 Steps in the Evaluation Process – Phase 1 of the RFP Process

6.4.1 Step 1 (Phase 1) – Compliance of the Phase 1 Proposal Submission and Phase 1 Proposal Submission Form

(1) In Step 1 (Phase 1) Infrastructure Ontario will open each Phase 1 Proposal Submission and will review the contents of the Phase 1 Proposal Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents, including whether all documents required to be submitted have been appropriately submitted and whether the Phase 1 Proposal Submission Form has been properly completed.

(2) If, in the sole discretion of Infrastructure Ontario, the Phase 1 Proposal Submission does not comply with the requirements set out in the RFP Documents, Infrastructure Ontario may, in its sole discretion and without liability, cost or penalty, eliminate the Proposal and the Respondent shall not be given any further consideration.

6.4.2 Step 2 (Phase 1) – Review of the Phase 1 Proposal Submission

(1) In Step 2 (Phase 1) the Evaluation Committee shall review the contents of the Phase 1 Proposal Submissions in accordance with the evaluation criteria set out in Schedule 2 to assess whether the Phase 1 Proposal Submission is “Satisfactory” or “Unsatisfactory”.

6.4.3 Step 3 (Phase 1) – “Satisfactory” or “Unsatisfactory” Determination

(1) In Step 3 (Phase 1) the Evaluation Committee will determine, based on the Respondent’s Phase 1 Proposal Submission whether the Respondent has achieved a “Satisfactory” rating in accordance with the requirements of Schedule 2 and, as a result, whether the Respondent will be permitted to continue on to Phase 2 of the RFP Process.

6.5 Steps in the Evaluation Process – Phase 2 of the RFP Process

6.5.1 Step 1 (Phase 2) – Compliance of Proposals

(1) In Step 1 (Phase 2) Infrastructure Ontario will open each Phase 2 Proposal Submission and will review the contents of the Phase 2 Proposal Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents, including whether all documents required to be submitted have been appropriately submitted.

(2) If, in the sole discretion of Infrastructure Ontario, the Phase 2 Proposal Submission does not comply with the requirements set out in the RFP Documents, Infrastructure Ontario may, in its sole discretion, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration.

6.5.2 Step 2 (Phase 2) – Review of the Proposal Submission Form

In Step 2 (Phase 2) Infrastructure Ontario shall review the Phase 2 Proposal Submission Form to,

- (a) ensure that the form has been properly completed and signed; and
- (b) assess the Conflict of Interest and Confidential Information section of the Phase 2 Proposal Submission Form.

6.5.3 Step 3 (Phase 2) – Review and Scoring of the Commercial and Schedule Submissions

(1) In Step 3 (Phase 2) the Evaluation Committee shall review the factors set out in Schedule 6 to the RFP including strength of the financial submission (as set out in the Financial Submission), operating, maintenance and decommissioning costs, fuel requirements, performance, schedule (including schedule assessments for design readiness, licensing, mitigation of supply chain bottlenecks and project management) in accordance with the weightings and evaluation criteria set out in Schedule 6. The Evaluation Committee shall establish a score for the Commercial and Schedule Submissions (the “Commercial and Schedule Score”).

6.5.4 Step 4 (Phase 2) – Review and Scoring of the Domestic Content Submission

In Step 4 (Phase 2) the Evaluation Committee shall review each of the domestic content submissions in accordance with the weightings and evaluation criteria set out in

Schedule 6. The Evaluation Committee shall establish a domestic content score for each of the domestic content submissions (the “Domestic Content Score”).

6.5.5 Step 5 (Phase 2) – Establishing a Final Proposal Score and Ranking Respondents

(1) In Step 5 (Phase 2) the Evaluation Committee shall establish a final proposal score (“Final Proposal Score”) based on the Commercial and Schedule Score and the Domestic Content Score in accordance with Schedule 6.

(2) The Evaluation Committee shall rank only those Respondents that have met all requirements in Steps 1 through 4 (Phase 2) and, subject to RFP Section 8.1(1)(c), shall base the ranking on the Final Proposal Score.

(3) In the event of a tie in the Final Proposal Scores of two Respondents, Infrastructure Ontario will resolve the tie by designating the tied Respondent that has the highest Commercial and Schedule Score as the highest ranked Respondent and proceed in accordance with RFP Sections 8.1.

6.6 Quality Assurance Preliminary Assessment

(1) Respondents are advised that Ontario new nuclear plants must meet the requirements of the Canadian Standards Association (“CSA”) N286 standards for a Quality Management System as a licensing requirement. This will require the Client to demonstrate that the Preferred Vendor has a documented program that meets requirements similar to those of Quality Assurance/Management System standard CSA N286. To meet its CSA N286 quality assurance obligations, the Client must assess whether each of the Respondents has an acceptable quality assurance program or management system in place (the “Quality Assurance Preliminary Assessment”). The Quality Assurance Preliminary Assessment will deal with CSA N286-05, “Management System Requirements for Nuclear Power Plants” and CSA N286.7-99, “Quality Assurance of Analytical, Scientific and Design Computer Programs for Nuclear Power Plants”.

(2) During Phase 2 of the RFP Process, representatives of the Client will be conducting the Quality Assurance Preliminary Assessment of all Respondents by assessing the critical characteristics of the Respondents quality/management system to provide the Client with assurance that the Respondents have the essential elements of a management system that could be qualified to CSA N286. A description of the nature of the Quality Assurance Preliminary Assessment is contained in the Data Room.

(3) The Quality Assurance Preliminary Assessment of Respondents is a high level assessment for which the Respondents will receive either an “acceptable” or “unacceptable” assessment. All Respondents must receive an “acceptable” assessment to continue in the RFP Process.

(4) The Quality Assurance Preliminary Assessment will be carried out by an audit team that is separate and independent of the Evaluation Committee. This audit team will report only its final determination to the Evaluation Committee. For the purpose of this RFP Process, the Quality Assurance Preliminary Assessment will not be scored and any documents submitted or reviewed by the audit team will not form part of a Respondent’s Phase 2 Proposal Submission.

SECTION 7– GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Infrastructure Ontario’s Discretion in Determining Compliance, Scoring and Ranking

- (1) Infrastructure Ontario shall determine, in its sole discretion,
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether a Respondent receives a “Satisfactory” or “Unsatisfactory” rating in Phase 1 of the RFP Process;
 - (c) whether a Proposal (including either a Phase 1 Proposal Submission or a Phase 2 Proposal Submission) is compliant with the RFP Documents;
 - (d) whether a failure to comply constitutes a material deviation;
 - (e) the Commercial and Schedule Score of a Phase 2 Proposal Submission;
 - (f) the Domestic Content Score of a Phase 2 Proposal Submission;
 - (g) the rankings of the Phase 2 Proposal Submissions and whether successful negotiations have been achieved in accordance with RFP Section 8.1(1)(c) and RFP Section 8.1(2)(a); and
 - (h) whether a Proposal or a Respondent,
 - (i) is disqualified; or
 - (ii) will cease to be considered in the evaluation process.

7.1.2 Disqualification

- (1) Infrastructure Ontario may, in its sole discretion, disqualify a Proposal or reverse its decision to identify a Respondent as a Negotiations Respondent or the Preferred Vendor at any time prior to the Project Agreement Effective Date if,
 - (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.4.1 or 6.5;
 - (b) the Respondent fails to cooperate in any attempt by Infrastructure Ontario to clarify or verify any information provided by the Respondent in its Proposal;
 - (c) the Respondent contravenes RFP Section 3.3.3 or 3.3.4;
 - (d) the Respondent fails to comply with the Applicable Law;
 - (e) the Proposal contains false or misleading information or a misrepresentation;
 - (f) the Proposal, in the opinion of Infrastructure Ontario, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Respondent,
 - (i) does not receive a waiver from Infrastructure Ontario in accordance with RFP Section 3.9.1(6) or does not receive a

- consent in accordance with RFP Section 3.9.2(4), as applicable;
or
- (ii) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
 - (g) if, in the sole discretion of Infrastructure Ontario, the Respondent or a Respondent Team Member or any of their respective Advisors, employees, representatives or subcontractors directly or indirectly colluded with one or more other Respondents or other Respondent's Respondent Team Members or any of their respective Advisors, employees, representatives or subcontractors in the preparation or submission of a Respondent's Proposal or otherwise contravened RFP Section 3.3.5; or
 - (h) the Respondent has committed a material breach of any existing agreement between the Respondent and any one or more of Ontario Power Generation, Bruce Power, Infrastructure Ontario or any Ministry, Agency, Board or Commission of the Government of Ontario.

SECTION 8 – COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED VENDOR

8.1 Evaluation Results and the Identification of Negotiations Respondents and a Preferred Vendor

- (1) Based on the Final Proposal Scores, Infrastructure Ontario may, in its sole discretion and at any time prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable),
 - (a) identify the highest ranked Respondent and either,
 - (i) accept the Respondent's Proposal as submitted and identify that Respondent as the Preferred Vendor; or
 - (ii) enter into negotiations with that Respondent;
 - (b) identify the two highest ranking Respondents as the "First Negotiations Respondent" (highest ranked) and the "Second Negotiations Respondent" (second highest ranked) and enter into negotiations with the First Negotiations Respondent and, failing successful negotiations, enter into negotiations with the Second Negotiations Respondent and identify the Respondent with whom Infrastructure Ontario concludes successful negotiations as the Preferred Vendor; or
 - (c) if there is a difference of 10 points or less between the Final Proposal Scores of the two highest ranking Respondents, identify both Respondents as Negotiations Respondents, consider those Negotiations Respondents to be ranked equally, and enter into separate and distinct but contemporaneous negotiations with the Negotiations Respondents and identify a Preferred Vendor as a result of those negotiations.

Respondents identified to enter into negotiations with Infrastructure Ontario in accordance with RFP Section 8.1(1) are "Negotiations Respondents". For greater clarity, Infrastructure Ontario

may, at any time during the RFP Process and in its sole discretion, elect to change the negotiation process chosen from among those set out in this RFP Section 8.1(1).

(2) If Infrastructure Ontario enters into contemporaneous negotiations in accordance with RFP Section 8.1(1)(c), Infrastructure Ontario shall do so in accordance with the following principles:

- (a) Prior to the commencement of negotiations, Infrastructure Ontario shall provide the Respondents with a negotiations protocol specific to this RFP Process (“Negotiations Protocol”) outlining, in detail, the process by which negotiations will proceed, the timing for negotiations, and a description of Infrastructure Ontario’s approach to identifying which Negotiations Respondent has been successful in the negotiation process;
- (b) The matters negotiated with the Negotiations Respondents shall be,
 - (i) generally the same for both Negotiations Respondents;
 - (ii) established prior to negotiations (based on the Negotiations Respondents’ Phase 2 Proposal Submissions); and
 - (iii) disclosed to the Negotiations Respondents in the Negotiations Protocol;
- (c) If Infrastructure Ontario is considering scope changes (or other types of changes) to reduce the cost of the Project, those changes under consideration shall be presented equally to each of the Negotiations Respondents;
- (d) Negotiations Respondents shall be given a final opportunity to submit their final offers based on the same revisions to the Project Agreement; and
- (e) Strict confidentiality shall be observed by Infrastructure Ontario and the Negotiations Respondents during any negotiation process and information from one negotiation process must be isolated from the other negotiation process, subject to RFP Section 8.1(2)(d).

(3) Infrastructure Ontario may use the negotiation process to negotiate any aspect of a Negotiations Respondent’s Proposal, the Project Agreement or the Fuel Agreement, including, for greater clarity, any amendments to the Project Agreement or the Fuel Agreement that are required,

- (a) to revise the scope of the Project in the event that all Financial and Milestone Payment Submissions have exceeded the Client’s Project budget;
- (b) to revise provisions of the Project Agreement to take into account the choice of pricing options made by Respondents in accordance with Schedule 11 to this RFP; and
- (c) to revise the provisions of the Project Agreement to take into account the structure of the Preferred Vendor.

(4) Subject to RFP Section 5.4(4), notwithstanding any negotiations between Infrastructure Ontario and the Preferred Vendor or Infrastructure Ontario and any Negotiations Respondents, the Proposals of all Respondents shall remain valid and irrevocable until the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable) or until the Project Agreement Effective Date, in accordance with RFP Section 5.4(1).

(5) On the completion of negotiations, if any, in accordance with RFP Section 8.1 and in respect of the Respondent that Infrastructure Ontario intends to identify as the Preferred Respondent, Infrastructure Ontario shall prepare a revised Project Agreement and revised Fuel Agreement, as applicable, which revised agreements shall reflect the results of the negotiation process and shall form the basis for the identification of the Preferred Vendor. For the purposes of RFP SECTION 9, the revised Project Agreement shall be the “Project Agreement” and the revised Fuel Agreement shall be the “Fuel Agreement”, as applicable.

SECTION 9 – PREFERRED VENDOR

9.1 Identification of the Preferred Vendor and the Letter of Credit

(1) Subject to RFP Section 10.1 and 10.2, Infrastructure Ontario intends to identify a Preferred Vendor in accordance with RFP Section 8.1.

(2) No later than two Business Days after a Respondent’s receipt of a notice from the Contact Person that the Respondent is the Preferred Vendor, the Preferred Vendor shall provide an irrevocable standby letter of credit (the “Letter of Credit”) in the amount of \$5,000,000. and in the form attached to the RFP Data Sheet (Attachment 1 to the RFP Data Sheet) to secure the Preferred Vendor’s obligations in accordance with RFP Section 9.1(5).

(3) If the Preferred Vendor does not provide the Letter of Credit to Infrastructure Ontario as required by this RFP Section 9.1 Infrastructure Ontario may, in its sole discretion, by written notice to the Preferred Vendor, cease all discussions with the Preferred Vendor, terminate any obligations of Infrastructure Ontario to the Preferred Vendor under any agreement or understanding relating to the Project, and, for greater certainty, the Preferred Vendor will not be entitled to or receive any payment or compensation of any kind relating to the Project.

(4) Subject to Infrastructure Ontario’s 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 Preferred Vendor as follows:

- (a) if Infrastructure Ontario gives notice to the Preferred Vendor that it is cancelling or discontinuing the RFP Process, no later than 10 days after receipt by Infrastructure Ontario of a written demand for the Letter of Credit by the Preferred Vendor; or
- (b) unless Infrastructure Ontario and the Preferred Vendor agree that the Letter of Credit shall be amended and delivered to Infrastructure Ontario in satisfaction of Project Co’s obligations in accordance with the Project Agreement, upon Commercial Close.

(5) Infrastructure Ontario shall be entitled to draw on the Letter of Credit and retain and apply the proceeds thereof as liquidated damages if,

- (a) there is a breach of the Preferred Vendor obligations set out in RFP Section 9.2 by the Preferred Vendor;

- (b) Commercial Close has not occurred (for reasons other than the failure of Infrastructure Ontario to execute the Project Agreement) on or before the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable); or
- (c) the Preferred Vendor has notified Infrastructure Ontario in writing that it wishes to cease all discussions with Infrastructure Ontario relating to the Project.

(6) Infrastructure Ontario shall not be required to give any prior written notice to the Preferred Vendor of its intention to draw on the Letter of Credit. If the Preferred Vendor notifies the Contact Person in writing that the Preferred Vendor disputes Infrastructure Ontario's right to draw on the Letter of Credit and to retain the proceeds as liquidated damages, then Infrastructure Ontario shall nonetheless be entitled to draw on the Letter of Credit, but will remain liable to repay all or a portion of the amount drawn, together with interest charges at the rate prescribed on that amount, until such dispute has been finally resolved. If the Preferred Vendor fails to renew or extend the Letter of Credit at least 30 days prior to its expiry date, Infrastructure Ontario may, at any time without notice to the Preferred Vendor, 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.

9.2 Preferred Vendor Obligations

- (1) The Preferred Vendor shall,
 - (a) deliver all Closing Documents as listed in Schedule 10 to this RFP (including, for greater clarity, a Fuel Agreement executed by Fuel Co) and reach the Project Agreement Effective Date prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable);
 - (b) fulfill all of its obligations in order to reach the Project Agreement Effective Date on or before the Project Agreement Target Date or such other earlier or later date as the Preferred Vendor and Infrastructure Ontario may agree in writing;
 - (c) at the request of Infrastructure Ontario, revise the Draft Scope Book to resolve any inconsistencies between the Preferred Vendor's Draft Scope Book (as included in the Preferred Vendor's Phase 2 Proposal Submission) and Schedule 29 – Client Requirements (to create the "Scope Book" as defined in the Project Agreement);
 - (d) execute the Project Agreement and cause Fuel Co to execute the Fuel Agreement subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to complete the Project Agreement;
 - (ii) minor changes, additions and modifications necessary to complete the Fuel Agreement;
 - (iii) changes, additions and modifications to those provisions of the Project Agreement or Fuel Agreement which require,

- (A) the insertion or addition of information relating to the Preferred Vendor's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement or Fuel Agreement, as applicable; or
- (B) the insertion or addition of information or the modification of provisions of the Project Agreement or Fuel Agreement, as applicable, required in order to reflect accurately the structure of the Preferred Vendor;
- (iv) changes, additions and modifications required in order to complete (based on the Preferred Vendor's Phase 2 Proposal Submission) any provision of the Project Agreement or Fuel Agreement, as applicable (where such completion is contemplated in or required under the terms of the Project Agreement or Fuel Agreement, as applicable) or to complete any Schedules to the Project Agreement or schedules to the Fuel Agreement, as applicable (where such completion is contemplated in or required under the terms of the Project Agreement or Fuel Agreement, as applicable); and
- (v) 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)(d) are consistent with the principles set out in the Project Agreement and Fuel Agreement and otherwise acceptable, in Infrastructure Ontario's sole discretion.

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

10.1 General Rights of Infrastructure Ontario

- (1) Infrastructure Ontario may, in its sole discretion,
 - (a) reject any or all of the Phase 1 or Phase 2 Proposal Submissions;
 - (b) accept or reject an innovation submission in any Proposal, as set out in Schedule 6;
 - (c) accept any Proposal;
 - (d) if only one Proposal (consisting of both a Phase 1 and Phase 2 Proposal Submission) is received, elect to accept or reject it or enter into negotiations with the Respondent;
 - (e) elect to indefinitely delay or cancel the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Vendor but before the Project Agreement Effective Date;
 - (f) alter the Timetable, the RFP Process or any other aspect of this RFP; and

- (g) cancel this RFP Process 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 or invited Respondents.

10.2 Special Circumstances - Phase 2 Proposal Submissions

(1) If Infrastructure Ontario determines that all of the Respondents' Phase 2 Proposal Submissions are non-compliant in accordance with RFP Section 6.5, Infrastructure Ontario may, in its sole discretion,

- (a) take any action in accordance with RFP Section 10.1(1);
- (b) carry out a process whereby all Respondents are directed to correct the material deviations in their Proposals for re-submission, without a change in their Financial Submission Forms; or
- (c) enter into negotiations with any one of the Respondents to attempt to finalize a Project Agreement.

(2) If Infrastructure Ontario receives,

- (a) only one Phase 2 Proposal Submission and that Phase 2 Proposal Submission is compliant; or
- (b) more than one Phase 2 Proposal Submission, but only one compliant Phase 2 Proposal Submission;

Infrastructure Ontario may, in its sole discretion,

- (c) take any action in accordance with RFP Section 10.1(1); or
- (d) enter into negotiations with the Respondent that submitted the compliant Phase 2 Proposal Submission.

10.3 Infrastructure Ontario Liability for Respondent's Costs

10.3.1 General

Except as provided in RFP Sections 10.3.2, neither Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team shall be liable for any expense, cost, loss or damage incurred or suffered by any Respondent, any Respondent Team Member, any Respondent Advisor or any person connected with any one of them, as a result of any action taken or omission by Infrastructure Ontario in accordance with RFP Sections 10.1 or 10.2.

10.3.2 Break Fee

(1) Subject to RFP Section 10.3.2(3), Infrastructure Ontario shall pay a cancellation or "break" fee ("Break Fee") to Respondents of up to \$1,000,000 per Respondent, depending on the date cancellation occurs, in accordance with the following:

- (a) If the RFP Process is cancelled after the issuance of the RFP to the invited Respondents (to commence Phase 1 of the RFP Process), but prior to the issuance of the Phase 2 Documents in accordance with RFP

Section 2.1(3)(b), Infrastructure Ontario will pay \$500,000 to each invited Respondent listed in RFP Section 1.2(2); and

- (b) If the RFP Process is cancelled after the issuance of the Phase 2 Documents in accordance with RFP Section 2.1(3)(b), Infrastructure Ontario shall,
 - (i) pay \$1,000,000 to each Respondent that achieved a “Satisfactory” rating in accordance with Phase 1 of the RFP Process; and
 - (ii) pay \$500,000 to each Respondent that did not achieve a “Satisfactory” rating in accordance with Phase 1 of the RFP Process.

(2) Payment of a Break Fee shall represent full and final satisfaction of any obligation or liability of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario and the Government Project Team to the Respondent and Respondent Team Members in connection with this RFP Process, and Infrastructure Ontario's obligation to pay the Break Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Infrastructure Ontario, from the Respondent and Respondent Team Members to that effect.

(3) If the RFP Process is cancelled, a Respondent shall be eligible to receive only a Break Fee and the amount of Break Fee paid shall be determined in accordance with this RFP Section 10.3.2. Infrastructure Ontario shall not be obliged to pay a Break Fee to Respondents who,

- (a) did not indicate a preliminary intention to participate in the RFP Process in accordance with RFP Section 2.3(1)(b);
- (b) have formally withdrawn from the RFP Process; or
- (c) have ceased to be an active participant in the RFP Process.

10.4 Applicable Law, Attornment and Limit on Liability

10.4.1 Applicable Law and Attornment

- Law.
- (1) This RFP shall be governed and construed in accordance with the Applicable Law.
 - (2) The Respondent 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 Respondent 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 10.4.1.

10.4.2 Limit on Liability

(1) The Respondent agrees that if Infrastructure Ontario commits a material breach of this RFP (that is, a material breach of the bidding contract or “Contract A”) or Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or any member of the Government Project Team is liable in any other way to the Respondent or Respondent Team Members as a result of this RFP Process, the liability of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power, the Government of Ontario and the Government Project Team to the Respondent and Respondent Team Members and the aggregate amount of damages recoverable against them for any matter relating to or arising from any act or omission, negligent or otherwise, of Infrastructure Ontario, the Client, Ontario Power Generation, Bruce Power or any member of the Government Project Team, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, shall not exceed the lesser of,

- (a) the Proposal preparation costs that the Respondent seeking damages from Infrastructure Ontario can demonstrate; or
- (b) \$250,000 if the material breach occurs in Phase 1 of the RFP Process or \$1,000,000 if the material breach occurs in Phase 2 of the RFP Process.

(2) For greater clarity, the Respondent acknowledges and agrees that if it receives a Break Fee in accordance with RFP Section 10.3.2, the amount of the Break Fee paid to the Respondent shall be deducted from any amount payable pursuant to RFP Section 10.4.2(1).

10.5 Licences, Permits, etc.

If a Respondent or a Respondent Team Member is required by the 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 Client shall be considered to be approval by Infrastructure Ontario, the Client, Ontario Power Generation or the Government of Ontario of carrying on such activity without the requisite licence, permit, consent or authorization.

10.6 Power of Legislative Assembly and Executive Council Approval

(1) Respondents and Respondent Team Members are advised that no provision of the RFP Documents (including a provision stating the intention of Infrastructure Ontario) 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.

(2) Respondents and Respondent Team Members are further advised and put on notice that the results of the RFP Process, including the identification of the Preferred Vendor and the determination as to whether the Client will enter into the Project Agreement is in the sole discretion of the Executive Council of the Government of Ontario.

10.7 Third Party Beneficiaries.

(1) The Respondent acknowledges that the Government of Ontario, the Client, Ontario Power Generation, Bruce Power and the Government Project Team are third party beneficiaries with rights and remedies under this RFP,

(2) Each Respondent agrees that Infrastructure Ontario acts as trustee for the Client, Ontario Power Generation, Bruce Power, the Government of Ontario, the Government Project

Team and for each of their related entities and their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated by this RFP arising in favour of a related entity or the Client, Ontario Power Generation, Bruce Power, Government of Ontario or the Government Project Team or any of their respective directors, officers, consultants, employees, agents or representatives and that Infrastructure Ontario has agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Client, Ontario Power Generation, Bruce Power, the Government of Ontario or the Government Project Team and each of their respective directors, officers, consultants, employees, agents and representatives.

SECTION 11 – NOTIFICATION AND DEBRIEFING

(1) After the completion of Phase 1 of the RFP Process, Infrastructure Ontario will formally notify and debrief all Respondents, if any, who did not achieve a “Satisfactory” rating in Phase 1 of the RFP Process and, therefore, will not be permitted to continue to Phase 2 of the RFP Process.

(2) Any time after the Preferred Vendor has been identified, Infrastructure Ontario will formally notify all Respondents who were not successful in the RFP Process that they have not been selected. Notwithstanding such notification, the Respondents’ Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Project Agreement Effective Date in accordance with RFP Section 5.4.

(3) Any time after the Project Agreement Effective Date, Infrastructure Ontario, and a member or members of the Evaluation Committee will meet with any unsuccessful Respondents, at the request of the unsuccessful Respondent, to provide a de-briefing.

SECTION 12 – INTERPRETATION AND DEFINITIONS

12.1 General

(1) With respect to Phase 2 of the RFP Process, 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.

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

(3) If Infrastructure Ontario’s consent is required in accordance with this RFP, such consent may be withheld in the sole discretion of Infrastructure Ontario.

(4) For greater clarity, wherever the RFP imposes an obligation on a Respondent or a Respondent Team Member to conduct itself in a prescribed manner or to refrain from any act, such obligation also applies to the employees, agents and Advisors of the Respondent or Respondent Team Member.

12.2 RFP Definitions

Whenever used in this RFP,

(1) “Addendum” means a written addendum to the RFP Documents issued by Infrastructure Ontario as set out in RFP Section 3.7;

(2) “Additional Facility Visit” is defined in RFP Section 3.5.2(2);

(3) “Advisor” means any person or firm retained to provide professional advice to any one of Infrastructure Ontario, Ontario Power Generation, Bruce Power, the Government of Ontario, a Respondent or a Respondent Team Member, as applicable;

(4) “Affiliate” means with respect to any person, any other person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such person, and includes any person in like relation to an Affiliate. A person shall be deemed to “control” another person if such person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of voting securities, by contract or otherwise; and the term “controlled” shall have a similar meaning;

(5) “Applicable Law” means the laws of the Province of Ontario and the applicable laws of Canada;

(6) “Background Information” is defined in RFP Section 2.4(1)(b);

(7) “Break Fee” means an amount to compensate a Respondent for some of the costs the Respondent has incurred in developing and submitting a Phase 1 or Phase 2 Proposal Submission in the event that the RFP Process is cancelled, all as set out in RFP Section 10.3.2;

(8) “Bruce Power” means Bruce Power L.P., Bruce Power A L.P., and their respective partners;

(9) “Business Day” means a day that is not Saturday, Sunday or a legal holiday in the Province of Ontario;

(10) “CCM Submissions” is defined in RFP Section 3.4.3;

(11) “Client” is defined in RFP Section 1.2(1) and, for clarity, for the purpose of the Project Agreement “Client” means Ontario Power Generation;

(12) “Closing Documents” are those documents that are listed in Schedule 10 to the RFP and which must be submitted prior to achieving the Project Agreement Effective Date;

(13) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);

(14) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);

(15) “Commercial and Schedule Score” is defined in RFP Section 6.5.3;

(16) “Confidential Information” is defined in RFP Section 3.8.6(1);

(17) “Conflict of Interest” is defined in RFP Section 3.9.1(7);

(18) “Construction Manager” is defined in RFP Section 3.6.3(1);

(19) “Contact Person” is defined in RFP Section 3.2.1(1);

(20) “Data Room” is defined in RFP Section 2.4(1);

(21) “Domestic Content Score” is defined in RFP Section 6.5.4;

(22) “Evaluation Committee” is defined in RFP Section 6.1(1);

(23) “Existing Facilities” are those facilities, if any, listed as Existing Facilities in the RFP Data Sheet;

- (24) “Fairness Monitor” is defined in the RFP Data Sheet;
- (25) “Fuel Agreement” is defined in RFP Section 1.2(6);
- (26) “Final Proposal Score” is defined in RFP Section 6.5.5(1);
- (27) “First Negotiations Respondent” is defined in the RFP Section 8.1(1)(b);
- (28) “FIPPA” is defined in RFP Section 3.8.1(1);
- (29) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);
- (30) “Government Project Team” means the team of individuals representing Infrastructure Ontario, the Client, the Government of Ontario, Ontario Power Generation and Bruce Power in respect of this RFP Process and includes,
 - (a) any of the employees, Advisors or representatives of Infrastructure Ontario, the Client, the Government of Ontario, Ontario Power Generation and Bruce Power who may provide advice or input to the RFP Process, the RFP Documents, the Data Room or the Background Information, from time to time;
 - (b) executives and members of the boards of directors of Infrastructure Ontario, the Client, Ontario Power Generation and Bruce Power; and
 - (c) the Evaluation Committee and any other oversight committee established by the Government of Ontario in respect of this RFP Process;
- (31) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (32) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (33) “Ineligible Persons Affiliate” is defined in RFP Section 3.9.2(1);
- (34) “IO” is defined in RFP Section 1.2(1);
- (35) “Infrastructure Ontario” is defined in RFP Section 1.2(1);
- (36) “Negotiations Respondent” is defined in the RFP Section 8.1(1);
- (37) “OIPC” is defined in RFP Section 1.2(1);
- (38) “Ontario Power Generation” means Ontario Power Generation Inc.;
- (39) “PIR” means the Ministry of Public Infrastructure Renewal;
- (40) “Phase 1 Documents” is defined in RFP Section 2.1(3)(a);
- (41) “Phase 2 Documents” is defined in RFP Section 2.1(3)(b);
- (42) “Phase 1 Proposal Submission” is defined in RFP Section 1.2(5);
- (43) “Phase 2 Proposal Submission” is defined in RFP Section 1.2(5);
- (44) “Phase 1 Submission Deadline” is defined in RFP Section 3.1(1);

- (45) “Phase 2 Submission Deadline” is defined in RFP Section 3.1(1);
- (46) “Preferred Vendor” is defined in RFP Section 1.2(6);
- (47) “Project Agreement” is defined in RFP Section 1.2(6);
- (48) “Project Agreement Effective Date” is defined in RFP Section 1.2(7);
- (49) “Project Agreement Target Date” is set out in the Timetable;
- (50) “Project” is defined in RFP Section 1.1(2);
- (51) “Proposal” is defined in RFP Section 1.2(5);
- (52) “Proposal Validity Period” is defined in RFP Section 5.4(1);
- (53) “Respondent” is defined in RFP Section 1.2(5);
- (54) “Respondents Meetings” is defined in RFP Section 3.4.1(1);
- (55) “Respondent Representative” is defined in RFP Section 2.3(1)(a);
- (56) “Respondent Team” means the collection of Respondent Team Members required to be named in the Respondent’s Phase 2 Proposal Submission;
- (57) “Respondent Team Member” means the Respondent itself (including, for clarity, the Revised Respondent), shareholders or consortium members, if any exist, the Construction Manager and Fuel Co. For clarity, a subcontractor or supplier that the Respondent was not required to name to meet the Schedule 6 submission requirements and that was provided for information only is not a “Respondent Team Member”;
- (58) “Revised Respondent” is defined in RFP Section 3.6.2(2)
- (59) “RFI” is defined in Section 3.2.2(1);
- (60) “RFP” is defined in RFP Section 1.2(1);
- (61) “RFP Documents” is defined in RFP Section 2.1(1);
- (62) “RFP Process” is defined in RFP Section 1.2(7);
- (63) “Scheduled Facility Visits” is defined in RFP Section 3.5.1;
- (64) “Second Negotiations Respondent” is defined in RFP Section 8.1(1)(b);
- (65) “Site”, for the purposes of the RFP only, is defined in the RFP Data Sheet;
- (66) “sole discretion”, wherever used, means in the sole and absolute discretion of the party exercising the discretion;
- (67) “Submission Deadline” is defined in RFP Section 3.1(1); and
- (68) “Timetable” is defined in RFP Section 2.1(3)(b).