



Request for Proposal
Northern College, Northern Training Div. (NTD)
Beginner Driver Education

Proposal Number RFP 21-NC0301BDE

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REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

- (1) Northern College set out in the RFP Data Sheet (the “**College**”) is issuing the RFP Documents to retain a vendor/service provider to provide the goods and/or services briefly described in the RFP Data Sheet and set out in the Draft Agreement (the “**Goods and/or Services**”). The RFP number is set out in the RFP Data Sheet (the “**RFP Number**”).
- (2) The College intends to award the final agreement that will be entered into pursuant to the RFP Process (the “**Final Agreement**”) through an open, fair and competitive RFP process. The RFP competition will be open either to,
 - (a) any Person described in RFP Section 3.16(2);
 - (b) if a prequalification has taken place, only those Persons that are prequalified to submit a response to the RFP Process as specified in the RFP Data Sheet (the “**Prequalified Parties**”); or
 - (c) only those entities that have been invited to submit a response to this RFP Process as specified in the RFP Data Sheet,

As applicable. In the RFP Documents, Persons that submit documents in response to this RFP Process are referred to as “**Proponents**”. The entity or entities that the College selects to be awarded the work is referred to as the “**Successful Proponent**”. For ease of reference, prospective proponents, whether or not they submit a proposal in response to this RFP Process (a “**Proposal**”), are also referred to as “Proponents”.

- (3) The process to select a vendor/service provider for the purposes of the Goods and/or Services will commence with the issuance of the RFP Documents and will terminate when the College selects a Successful Proponent or Successful Proponents (the “**RFP Process**”).

1.2 Contact Person

- (1) The Proponents are required to submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals in writing to the contact person named in the RFP Data Sheet (the “**Contact Person**”) using the communication method specified in the RFP Data Sheet. During the RFP Process, Proponents may contact the College only through the Contact Person.

1.3 Proponent Representatives

- (1) All correspondence from the College to a Proponent will be sent to the person identified by the Proponent to receive information and notices on behalf of the Proponent (the “**Proponent Representative**”). Each Proponent will provide the Contact Person with the name and contact information of the Proponent’s Proponent Representative in writing. Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

SECTION 2 – THE RFP DOCUMENTS

2.1 Request for Proposals Documents

- (1) The Request for Proposals documents (the “**RFP Documents**”) are:
 - (a) the Request for Proposals (the “**RFP**”);

- (b) Schedule A – RFP Data Sheet;
 - (c) Schedule B – Proposal Submission Form;
 - (d) Schedule C – Conflict of Interest Declaration;
 - (e) Schedule D – Submission Requirements and Evaluation Criteria, including,
 - (i) Schedule D Part 1 – Business Submission Requirements and Evaluation Criteria;
 - (ii) Schedule D Part 2 – Technical Submission Requirements and Evaluation Criteria;
 - (iii) Schedule D Part 3 – Financial Submission Requirements and Evaluation Criteria;
 - (f) Schedule E – Request for Information Form;
 - (g) Schedule F – Reference Form;
 - (h) Schedule G – Draft Agreement (including all related schedules, appendices and attachments thereto) (the “**Draft Agreement**”); and
 - (i) Addenda to the RFP Documents, if any.
- (2) The Proponents are instructed to read the RFP Documents as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference.
- (3) The College may also provide Proponents with background information (the “**Background Information**”). Whether or not Background Information will be provided to Proponents is noted in the RFP Data Sheet. Documents containing Background Information are not RFP Documents and do not amend the RFP Documents. Background Information is provided only for the convenience of Proponents.

2.2 Distribution of Documents to Proponents

- (1) Except as provided in RFP Section 2.2(2), the College will circulate this RFP and all other RFP Documents, including Addenda, as well as any Notices using the method specified in the RFP Data Sheet. The College will circulate responses to RFIs using the method specified for RFI responses in the RFP Data Sheet. If the College chooses to notify Proponent Representatives that documents have been circulated or posted, as applicable, such notification is a courtesy only and Proponents are solely responsible to ensure that they have reviewed all documents in accordance with RFP Section 2.2(3) and, in particular, have reviewed all documents circulated or posted immediately prior to submitting Proposals.
- (2) If a Proponent requires the RFP Documents in paper copy, the Proponent may submit a request to the Contact Person, along with a reason for why the Proponent requires the RFP Documents in paper copy. Following consideration of the Proponent’s request, the College may, in its sole discretion, choose to circulate RFP Documents in paper copy to the Proponent who made the request.
- (3) The College may add, delete or amend documents circulated pursuant to RFP Section 2.2(1) at any time. Each Proponent is solely responsible to ensure that it:
- (a) notifies the Contact Person if the Proponent is having difficulty viewing the RFP Documents, Addenda, Notices or responses to RFIs;

- (b) has the appropriate software which allows the Proponent to access and download RFP Documents, Notices, Addenda and responses to RFIs; and
- (c) checks frequently for the addition, deletion or amendment of RFP Documents, Notices, Addenda and responses to RFIs and, at all times during the RFP Process, keeps itself informed of and takes into account the most current RFP Documents, Notices, Addenda and responses to RFIs.

2.3 Proponent Investigations

- (1) Each Proponent 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 Proponent to satisfy itself as to all existing conditions affecting the Goods and/or Services or the Draft Agreement. The Proponent's obligations set out in this RFP Section 2.3 apply irrespective of any information contained in the RFP Documents or in responses to RFIs. The Proponents' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the College is more particularly set out in the Draft Agreement.
- (2) Except as may be expressly provided in the Draft Agreement, the College does not represent or warrant the accuracy or completeness of any information that is set out in the RFP Documents or of any other background or reference information or documents prepared by the College or by third parties and which may be made available to Proponents by or through the College. Proponents will make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents on any and all such information will be at the Proponents' sole risk and without recourse against the College.

SECTION 3 – THE RFP PROCESS

3.1 RFP Process Timetable

- (1) The deadline for the submission of Proposals (the “**Submission Deadline**”) and the general timetable for the RFP Process (the “**Timetable**”) are set out in the RFP Data Sheet.
- (2) The College may, without liability, cost or penalty and in its sole discretion amend the Timetable,
 - (a) for matters that are to take place on or before the Submission Deadline, at any time prior to the Submission Deadline; and
 - (b) for matters that are to take place after the Submission Deadline, at any time during the RFP Process.
- (3) If the College extends the Submission Deadline, all obligations of Proponents will thereafter be subject to the extended deadline.

3.2 Requests for Information

- (1) In addition to the requirement set out in RFP Section 1.2, the following rules will apply to Proponents when submitting questions or requests for clarifications or information (“**RFIs**”) to the College during the RFP Process:
 - (a) Proponents are required to submit all RFIs to the Contact Person using the method specified in the RFP Data Sheet, [**in the form set out in Schedule E – Request for Information Form**], and in accordance with the deadlines set out in the Timetable;
 - (b) Proponents are permitted to submit RFIs categorized as follows:

- (i) RFIs that are of general application and that would apply to other Proponents (“**General RFIs**”); and
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”);
- (c) If the College disagrees with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the College will give the Proponent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;
 - (d) If the College determines, in its sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the College may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and
 - (e) If the College agrees with the Proponent’s categorization of a Commercially Confidential RFI, then the College will provide a response to that RFI to only the Proponent that submitted the RFI.
- (2) The College will respond to RFIs in accordance with the schedule set out in the Timetable. The College may, in its sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.
 - (3) Responses to RFIs prepared and circulated by the College are not RFP Documents and do not amend the RFP Documents. If, in the College’s sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.4. 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, responses to RFIs will have no force or effect whatsoever and will not be relied upon by any Proponent.
 - (4) It is the Proponent’s obligation to seek clarification from the College of any matter it considers to be unclear in accordance with this RFP Section 3.2. The College is not responsible in any way whatsoever for any misunderstanding by the Proponent of the RFP Documents, responses to RFIs, any documents circulated or posted for Proponents or any other type of information provided by or communication made by the College or any third party.

3.3 Notices

- (1) The College may, in its sole discretion, issue Notices to Proponents, distributed in accordance with RFP Section 2.2(1), for the purpose of communicating on issues of importance to the RFP Process. Such Notices are not RFP Documents and do not amend the RFP Documents.

3.4 Addenda/Changes to the RFP Documents

- (1) The College may, in its sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline. The College will issue changes to the RFP Documents by Addenda distributed in accordance with RFP Section 2.2(1) only. No other statement, whether oral or written, made by the College or the College’s Advisors, including, for clarity, the Contact Person, or any other person, will amend the RFP Documents. The approximate final date that the College will issue an Addendum in respect of the Draft Agreement is set out in the Timetable, however, the College may issue other Addenda at any time.

- (2) The Proponent is solely responsible to ensure that it has received all Addenda issued by the College. Proponents may, in writing, seek confirmation of the number of Addenda issued pursuant to the RFP Documents from the Contact Person.

3.5 General Proponents Meeting(s)

- (1) The College may, in its sole discretion, convene general Proponents meetings (each, a “**Proponents Meeting**”). Whether or not the College intends to convene Proponents Meeting(s) is set out in the RFP Data Sheet. If the College does convene Proponents Meeting(s), the approximate date(s) of the Proponents Meeting(s) are set out in the Timetable. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Proponents Meeting is at the Proponent’s sole risk and responsibility. If Proponents are required to execute a confidentiality agreement in accordance with RFP Section 3.12, a Proponent will not be permitted to attend a Proponents Meeting unless it has complied with RFP Section 3.12.
- (2) The locations and particulars with respect to Proponents Meetings are set out in the RFP Data Sheet. The College reserves the right, in its sole discretion, to limit the number of Proponent attendees that may attend any Proponents Meeting by setting out any such limitation in the RFP Data Sheet.
- (3) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the College may give spoken answers at a Proponents Meeting, those answers will not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2 for response in accordance with RFP Section 3.2.
- (4) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meeting by the College or its Advisors will amend or waive any provision of the RFP Documents, or be binding on the College or be relied upon in any way by Proponents 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 3.4.

3.6 Prohibited Contacts

- (1) Proponents and 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 3.6(1), neither Proponents nor any of their respective Advisors, employees or representatives will contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following Persons on matters related to the RFP Process, the RFP Documents, or their Proposals:
 - (a) any Advisor to the College;
 - (b) any employee or representative of,
 - (i) the College; or
 - (ii) any other Person listed in the RFP Data Sheet; or
 - (c) any directors, officers, employees, agents, representatives or consultants of any entity listed in RFP Sections 3.6(2)(a) and 3.6(2)(b), including any **[member of the College Board of Governors]**.
- (3) If a Proponent or any of its respective Advisors, employees or representatives, in the opinion of the College, contravenes RFP Section 3.6(1) or RFP Section 3.6(2), the College may, in its sole discretion,

- (a) take any action in accordance with RFP Section 7.1; or
- (b) impose conditions on the Proponent's continued participation in the RFP Process that the College considers, in its sole discretion, to be appropriate.

For clarity, the College is not obliged to take the actions set out in this RFP Section 3.6(3).

- (4) The Proponent and its respective Advisors will,
 - (a) no later than the date set out in the Timetable, disclose all information in respect of Goods and/or Services which the Proponent or its respective Advisors have generated or have available to them as a result of work carried out by the Proponent or its respective Advisors, for the College in respect of, or in anticipation of, the Goods and/or Services; and
 - (b) at the request of the College, provide a director's or officer's certificate confirming that the requirements of RFP Section 3.6(4)(a) have been complied with by the Proponent.

For clarity, the College may, in its sole discretion, circulate the information provided pursuant to RFP Section 3.6(4)(a) to other Proponents and their respective Advisors. If any Proponent becomes aware of relevant information of the type set out in RFP Section 3.6(4)(a) that has not been made available to all Proponents, that Proponent will disclose such information promptly to the Contact Person.

3.7 Ineligible Persons

- (1) As a result of their involvement with respect to the Goods and/or Services, the Persons named as "Ineligible Persons" in the RFP Data Sheet (collectively, "**Ineligible Persons**") and their respective Advisors engaged in respect of the Goods and/or Services and, subject to RFP Section 3.7(2), any Person Controlled by, that Controls or that is under common Control with the Ineligible Persons (each an "**Ineligible Person's Affiliate**") are not eligible to participate as a Proponent or Advisor to a Proponent. The College may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process.
- (2) An Ineligible Person's Affiliate may be eligible to participate as a Proponent or an Advisor to a Proponent only after it has obtained written consent from the College permitting it to participate as a Proponent or an Advisor to a Proponent. The College will, in its sole discretion, make a determination as to whether the College considers there to be a perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized.

3.8 Media Releases, Public Disclosures and Public Announcements

- (1) Proponents are prohibited from, and will ensure that their Advisors are prohibited from, issuing or disseminating 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 or the Goods and/or Services or any matters related thereto, without the prior written consent of the College, which consent may be withheld in the College's sole discretion.
- (2) Neither the Proponents nor any of their respective Advisors, will make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the College's prior written consent, which consent may be withheld in the College's sole discretion.
- (3) For the purpose of greater clarity, RFP Section 3.8(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Goods and/or Services with prospective

subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation with respect to the Goods and/or Services.

3.9 Restrictions on Communications between Proponents – No Collusion

- (1) Neither a Proponent nor its respective Advisors or representatives will discuss or communicate, directly or indirectly, with any other Proponent (or such Proponent's respective Advisors or representatives), any information whatsoever regarding the preparation of its own Proposal or the Proposal of any other Proponent in a fashion that would contravene Governing Law. Proponents are required to prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

3.10 Disclosure of Proposal Information

- (1) Proponents are advised that the College may be required to disclose the RFP Documents and a part or parts of any Proposal pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended from time to time ("**FIPPA**") or in order to comply with the College's policies or other Governing Law.
- (2) Subject to the provisions of FIPPA, the College will use commercially reasonable efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but will not be liable in any way whatsoever to any Proponent if such information is disclosed based on an order or decision of the Information and Privacy Commissioner, or otherwise as required under Governing Law. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.
- (3) Notwithstanding RFP Section 3.10(2), the College may disclose the name and address of the Successful Proponent and the value and term of the contract, including any pricing information provided by a Proponent in its Proposal.
- (4) Proponents are advised that the College will not hold a public opening of Proposals.

3.11 Confidential Information

- (1) For the purpose of the RFP Process, "**Confidential Information**" means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the College or the College's Advisors, in connection with the RFP Process, the RFP Documents or the Goods and/or Services, whether supplied, obtained from or provided before or after the RFP Process.
- (2) The Proponent agrees that all Confidential Information:
 - (a) will remain the sole property of the College and the Proponent will treat it as confidential;
 - (b) will not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to the RFP Process or the performance of any subsequent agreement relating to the Goods and/or Services with the College;
 - (c) will not be disclosed by the Proponent to any Person who is not involved in the Proponent's preparation of its Proposal or the performance of any subsequent agreement relating to the Goods and/or Services with the College, without prior written consent of the College, in its sole discretion;
 - (d) will not be used in any way detrimental to the College; and

- (e) if requested by the College, all Confidential Information will be destroyed by the Proponents no later than 10 Business Days after that request.
- (3) Each Proponent will be responsible for any breach of the provisions of this RFP Section 3.11 by any Person to whom it discloses the Confidential Information including, for clarity, the Proponent's Advisors. Each Proponent will indemnify the College and each of its Advisors and 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 3.11 by the Proponent or by any Person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the College acts as trustee for each of its Advisors and related entities and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of an Advisor, a related entity or any of their respective directors, officers, consultants, employees, agents or representatives and that the College has agreed to accept such trust and hold and enforce such rights on behalf of each such Advisor or related entity and each of their respective directors, officers, consultants, employees, agents and representatives.
- (4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.11 would cause the College, its Advisors, and its related entities to suffer loss that could not be adequately compensated by damages, and that the College and its Advisors and related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.11 upon application to a court of competent jurisdiction without proof of actual damage to the College, its Advisors, or its related entities.
- (5) Notwithstanding anything else to the contrary in the RFP Documents, the provisions of this RFP Section 3.11 will survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, will be legally binding on all Proponents, whether or not a Proponent submits a Proposal.
- (6) The confidentiality obligations of the Proponent will not apply to any information which falls within the following exceptions:
 - (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
 - (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the College, and provided that it was not acquired by the Proponent under an obligation of confidence; or
 - (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

3.12 Confidentiality Agreements

- (1) If specified in the RFP Data Sheet, the Proponent will cause each of its representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the College a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the College, in its sole discretion, by the deadline set out in the Timetable. Proponents are advised that they will not be provided with responses to RFIs unless and until they comply with this RFP Section 3.12.

3.13 Copyright and Use of Information in Proposals

- (1) Proponents will not use or incorporate into their Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the College, the right to use and employ such concepts, products and processes in and for the Goods and/or Services.
- (2) All requirements, designs, documents, plans and information supplied by the College to the Proponents in connection with the RFP Process are and will remain the property of the College. Upon request of the College, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be destroyed.
- (3) The Proponent will grant to the College a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the Proposal Information for the purposes of evaluation of Proposals and the negotiation with respect to and execution of any Final Agreement (the "**Proposal Information Licence**"). Under no circumstances will the Proponent, except the counterparty to the College in the Final Agreement in relation to the Goods and/or Services, be liable to the College or to any other Person for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.
- (4) For the purpose of this RFP Section 3.13, "**Proposal Information**" includes all information contained in a Proposal or which is disclosed by or through a Proponent to the College during the evaluation of Proposals or during the process of executing any Final Agreement; and any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the College, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Draft Agreement.
- (5) Proponents will ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the College the rights set out in this RFP Section 3.13. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the College to use any of the Proposal Information as contemplated in this RFP Section 3.13, or anything else obtained by or through Proponents, will be unenforceable as against the College and each of their respective Advisors, and that the provisions of this RFP Section 3.13 will take precedence and govern.

3.14 Governing Law and Attornment

- (1) The RFP Documents and any Final Agreement will be governed and construed in accordance with Governing Law.
- (2) The Proponent agrees that,
 - (a) any action or proceeding relating to the RFP Process will be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose each Proponent and the College irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and will not oppose any Ontario action or proceeding relating to the RFP Process on any jurisdictional basis, including *forum non conveniens*; and

- (c) it will not oppose the enforcement against it, in any other jurisdiction, of any judgment or order duly obtained from an Ontario court as contemplated by this RFP Section 3.14(2).

3.15 Licences and Permits

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

3.16 Persons Permitted to Submit Proposals

- (1) If a prequalification process has preceded the RFP Process, subject to RFP Section 3.20, only the Prequalified Parties are eligible to participate in the RFP Process. The prequalification documents submitted by each Prequalified Party in the prequalification process that preceded the RFP Process are referred to as a Prequalified Party's "**Prequalification Submission**".
- (2) If a prequalification process has not preceded the RFP Process, a Proposal may be submitted by:
 - (a) a single Person as the Proponent;
 - (b) a collection of Persons as the Proponent (a "**Joint Venture Proponent**" and each Person being a "**Joint Venture Participant**"); or
 - (c) a prime contractor and subcontractors.
- (3) Each Joint Venture Proponent will submit, as part of its Proposal, a written commitment, in the form of a letter duly executed by a responsible officer of each Joint Venture Participant that,
 - (a) confirms each Joint Venture Participant's commitment to the joint venture and acceptance of the joint venture arrangements described in the Proposal in accordance with this RFP Section 3.16;
 - (b) confirms each Joint Venture Participant's willingness to provide a joint and several guarantee to the College to underwrite the performance of the joint venture in respect of the Final Agreement; and
 - (c) identifies which Joint Venture Participant,
 - (i) will assume the leading role on behalf of the other Joint Venture Participants; and
 - (ii) will have the authority to bind or commit all Joint Venture Participants (the "**Participant in Charge**").
- (4) Each Joint Venture Participant will demonstrate its authorization of the Participant in Charge by submitting a power of attorney signed by legally authorized signatories.
- (5) If a Final Agreement is executed between the College and a Joint Venture Proponent, the parent companies of the entities forming the Joint Venture Proponent will jointly and severally guarantee the obligations of the Joint Venture Proponent under the Final Agreement. The College may, in its sole discretion, also require parent companies of the entities forming the Joint Venture Proponent to be parties to the Final Agreement.
- (6) Where a Proposal is submitted by a prime contractor and subcontractors, the prime contractor shall submit a Proposal on its own behalf and on behalf of its subcontractors and

the prime contractor shall be responsible for ensuring its subcontractors perform their obligations under the Final Agreement.

3.17 Proponents' Costs

- (1) The Proponent will bear all costs and expenses incurred by the Proponent relating to any aspect of its participation in the RFP Process.
- (2) In no event will the College be liable to pay any costs or expenses or to reimburse or compensate a Proponent under any circumstances, regardless of the conduct or outcome of the RFP Process.

3.18 Delay and Costs of Delay

- (1) The Proponent will not hold the College liable for any error or omission in any part of the RFP Documents or for any delay, or costs associated with delays, in the RFP Process.

3.19 Clarification and Verification of Proponent's Proposal

- (1) The College may,
 - (a) require the Proponent to verify or clarify the contents of its Proposal or any statement made by the Proponent;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal; and
 - (c) seek a Proponent's acknowledgement of an interpretation by the College of the Proponent's Proposal.
- (2) The College is not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including any ambiguity in a Proposal or in a statement made by a Proponent.
- (3) Any written information received by the College from a Proponent pursuant to a request for clarification or verification from the College as part of the RFP Process may, in the College's discretion, be considered as an integral part of the Proposal.

3.20 Changes to Proponents

- (1) If a prequalification process has preceded the RFP Process, during the RFP Process, a Proponent will not permit a Prequalified Proponent Change to the Proponent or any Identified Proponent Party without the prior written consent of the College. For the purpose of this RFP Section 3.20(1), a change of Control will exclude a change in ownership of any shares or units of ownership that are listed on a recognized stock exchange.
- (2) If, prior to the Submission Deadline, there is a Prequalified Proponent Change, the Proponent will request the consent of the College by notifying the Contact Person in writing as soon as possible and, in any event, no later than seven days prior to the Submission Deadline. That notification will clearly identify the Prequalified Proponent Change and provide details regarding the impact of the Prequalified Proponent Change on the Proponent or Identified Proponent Party, as applicable. In addition, if the Prequalified Proponent Change involves the proposed substitution of an Identified Proponent Party, the Proponent will include sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process that preceded the RFP Process.
- (3) In response to a notification in accordance with RFP Section 3.20(2), the College may, in its sole discretion, provide the Proponent with instructions as to the type of information required by the College to consider the Prequalified Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its

request considered by the College. The Proponent will provide any further documentation as may be reasonably requested by the College to assess the impact of the Prequalified Proponent Change on the Proponent and any Identified Proponent Party, including, in the case of a proposed substitution, the acceptability of the proposed substitute. If the College, in its sole discretion, considers the Prequalified Proponent Change to be acceptable, the College may consent to the Prequalified Proponent Change. The College consent to the Prequalified Proponent Change, however, may be subject to such terms and conditions as the College may require. In the case of a proposed substitution of an Identified Proponent Party, if a Prequalified Proponent Change is not acceptable to the College, the Proponent may propose an alternate substitute for review by the College in the same manner as the first proposed substitute. The College may, in its sole discretion, accept a Prequalified Proponent Change, subject to such terms and conditions as the College, in its sole discretion, may require, disallow any Prequalified Proponent Change and may disqualify a Proponent from further consideration in the RFP Process.

- (4) In the case of a Prequalified Proponent Change made by the Proponent without consent by the College or a Prequalified Proponent Change after the Submission Deadline, the College may, in its sole discretion, disqualify the Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the Proponent to continue under such terms and conditions as the College, in its sole discretion, may require.
- (5) Irrespective of whether a prequalification process has preceded the RFP Process, if, on or after the Submission Deadline and prior to execution of the Final Agreement, there is a Post-Submission Proponent Change, then the Proponent will promptly notify the College in writing to the Contact Person. In response to a notification in accordance with this RFP Section 3.20(5), the College may, in its sole discretion, provide the Proponent with instructions as to the type of information required by the College to consider the Post-Submission Proponent Change as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by the College. The Proponent will provide any further documentation as may be reasonably requested by the College to assess the impact of the Post-Submission Proponent Change on the Proponent, including in the case of a proposed substitution of a Joint Venture Participant, the acceptability of the proposed substitute. In the case of a proposed substitution, if a Post-Submission Proponent Change is not acceptable to the College, the Proponent may propose an alternate substitute for review by the College in the same manner as the first proposed substitute. The College may, in its sole discretion, refuse to accept a Post-Submission Proponent Change that occurs or is requested by the Proponent after the Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.
- (6) If, at any time prior to the execution of the Final Agreement, and notwithstanding any other provision in the RFP Documents, there is a change of Control of a Proponent (the "**Acquiree**") by one of the other Proponents (the "**Acquirer**"):
 - (a) the Acquiree will be immediately disqualified from further participation in this RFP Process; and
 - (b) the College may, in its sole discretion, allow the Acquirer to continue in the RFP Process, however, the College's consent to continue may be subject to such terms and conditions as the College may require.

3.21 Insurance and Workplace Safety during the RFP Process

- (1) If, during the RFP Process, a Proponent attends a site visit or meeting contemplated in the RFP Documents, such Proponent represents and warrants that it has obtained and maintained sufficient insurance and has fulfilled any requirements with respect to workplace safety as required by Governing Law in order to attend such site visits and/or meetings.

SECTION 4 – PROPOSAL CONTENT AND FORMAT

4.1 Format and Content of Proposal

- (1) Proponents must prepare their Proposals in accordance with and in the content and format requirements set out in the RFP Data Sheet.
- (2) If applicable, the maximum length of the Proposal is set out in the RFP Data Sheet. The College may, in its sole discretion, not evaluate any pages of a Proposal in excess of the page limit set out in the RFP Data Sheet, which may adversely affect the scoring of the Proposal by the College.
- (3) Proponents are cautioned to review the provisions of the Draft Agreement with respect to pricing and compensation and will take all provisions into account when completing the Price Form.

4.2 Proposal Submission Form

- (1) Each Proponent will complete and execute the Proposal Submission Form attached as Schedule B – Proposal Submission Form.
- (2) Each Proponent will complete and submit any additional forms attached as appendices to Schedule B – Proposal Submission Form.

4.3 Contents of the Business Submission

- (1) The Proponent is required to prepare and submit its Business Submission in the format and containing the information set out in Schedule D Part 1 to this RFP – Business Submission Requirements and Evaluation Criteria.

4.4 Contents of the Technical Submission

- (1) The Proponent is required to prepare and submit its Technical Submission in the format and containing the information set out in Schedule D Part 2 to this RFP – Technical Submission Requirements and Evaluation Criteria.

4.5 Contents of the Financial Submission

- (1) The Proponent is required to prepare and submit its Financial Submission in the format and containing the information set out in Schedule D Part 3 to this RFP – Financial Submission Requirements and Evaluation Criteria.

4.6 Comments on the Draft Agreement

- (1) If specified in the RFP Data Sheet, the Proponent may be invited to provide comments on the Draft Agreement, including any suggested changes, as part of its Business Submission and/or the Technical Submission. The College may, in its discretion, and if specified in the RFP Data Sheet, evaluate the Proponent's comments and suggested changes and the College may specify certain terms and conditions that are not negotiable.

4.7 Conflict of Interest

- (1) For the purposes of the RFP Process "**Conflict of Interest**" includes any situation or circumstance where a Proponent or any of its Advisors, or any of the employees of a Proponent or Proponent Advisor engaged in the development or oversight of development of the Proponent's Proposal (including for such employees in their personal capacities):
 - (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:

- (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the College or its Advisors; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Draft Agreement if that Proponent was determined to be the Successful Proponent under the RFP Process;
 - (b) has contractual or other obligations to the College that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process; or
 - (c) has knowledge of confidential information (other than Confidential Information) that,
 - (i) has been made available to the Proponent or any of its Advisors by the College;
 - (ii) is of strategic and/or material relevance to the RFP Process or to the Goods and/or Services; and
 - (iii) is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.
- (2) If a Proponent believes that a Proponent or a Person who has had or who will have significant involvement in the preparation and/or oversight of the preparation of the Proposal may have a perceived, potential or actual Conflict of Interest prior to the submission of a Proposal, then that Proponent is required to deliver to the Contact Person no later than the deadline set out in the Timetable a completed Schedule C – Conflict of Interest Declaration, which will be used by the College in its assessment of the presence of a perceived, potential or actual Conflict of Interest involving any Proponent or any employee or Advisor of the College in respect of the Goods and/or Services. For clarity, all Proponents are also required to submit updated and completed versions of Schedule C – Conflict of Interest Declaration as part of their Proposals. Following submission of its Proposal, if a Proponent discovers any perceived, potential or actual Conflict of Interest, the Proponent will promptly disclose such Conflict of Interest to the Contact Person.
- (3) Proponents are advised to review the College policies listed in the RFP Data Sheet and ensure that the Proponent and its Advisors, as applicable, have complied with these policies and with any instructions from the College arising from the application of these policies. For clarity, Proponents have an ongoing obligation to comply with this RFP Section 4.7(3) in addition to complying with the foregoing policies.
- (4) At the request of the College, the Proponent will provide the College with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent will submit any additional information to the College that the College considers necessary to properly assess the perceived, potential or actual Conflict of Interest.
- (5) The final determination of whether a perceived, potential or actual Conflict of Interest exists will be made by the College in its sole discretion. The College may, in its sole discretion,
- (a) exclude any Proponent or Proponent Advisor on the grounds of Conflict of Interest;
 - (b) require the Proponent or a Proponent's Advisor to substitute a new Person for the Person giving rise to the Conflict of Interest; and/or
 - (c) waive any and all perceived, potential or actual Conflicts of Interest of Proponents or any of their respective Advisors, upon such terms and conditions as the College,

in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the College, in its sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.

- (6) Without limitation to any other rights of the College hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the College may, in its sole discretion
 - (a) impose at any time on all Proponents additional conditions, requirements or measures, with respect to bidding practices or ethical behaviour of the Proponents; and
 - (b) require that any or all Proponents at any time during the RFP Process provide the College with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent with such policies, processes and controls.

SECTION 5 – PROPOSAL SUBMISSION, WITHDRAWAL AND MODIFICATION

5.1 Submission of Proposals and Late Proposals

- (1) Each Proponent is required to submit its Proposal in hard copies before the Submission Deadline and in accordance with the requirements set out in this RFP Section 5.1.
- (2) With respect to the submission of Proposals, Proponents are advised as follows:
 - (a) Proponents must submit their Proposals by sending them by pre-paid courier or hand-delivery to the College, to the attention of the Contact Person at the address for submission set out in the RFP Data Sheet.
 - (b) Only Proposals received from Proponents who have obtained the documents directly from the College pursuant to RFP Section 2.2 will be considered for the purposes of the RFP Process.
 - (c) Each Proponent must submit the number and type of copies of its Proposal [specified in the RFP Data Sheet](#).
 - (d) The College will not accept responsibility for the delivery of any Proposal that is delivered other than by such submission, and will not accept, acknowledge, or return facsimile or electronically emailed Proposals. For greater certainty, Proponents should not send the Contact Person an e-mail or other communication containing any Proposal or portion thereof.
 - (e) Each Proponent must submit each of the following portions of its Proposal:
 - (i) a completed Proposal Submission Form;
 - (ii) a completed Conflict of Interest Declaration (prepared in accordance with the requirements set out in Schedule C – Conflict of Interest Declaration);
 - (iii) a completed Reference Form, if applicable (prepared in accordance with the requirements set out in Schedule F – Reference Form);
 - (iv) a completed commercial submission (prepared in accordance with the requirements set out in Schedule D Part 1 – Business Submission Requirements and Evaluation Criteria) (the **“Business Submission”**)

- (v) a completed technical submission (prepared in accordance with the requirements set out in Schedule D Part 2 – Technical Submission Requirements and Evaluation Criteria) (the “**Technical Submission**”)
 - (vi) a completed financial submission (prepared in accordance with the requirements set out in Schedule D Part 3 – Financial Submission Requirements and Evaluation Criteria) (the “**Financial Submission**”).
- (f) Each Proponent must seal its Proposal documents as follows:
- (i) The Proponent must place the Proposal Submission Form, the Technical Submission, the Business Submission, the Conflict of Interest Declaration and the Reference Form, if applicable, in a sealed envelope or package (the “**Technical and Business Submission Envelope**”) with the Proponent’s full legal name and return address, the RFP Number, the Submission Deadline and the label “Technical and Business Submission” clearly displayed on the outside of the Technical Submission Envelope; and
 - (ii) The Proponent must place the Financial Submission in a sealed envelope or package (the “**Financial Submission Envelope**”) with the Proponent’s full legal name and return address, the RFP Number, the Submission Deadline and the label “Financial Submission” clearly displayed on the outside of the Financial Submission Envelope; and
 - (iii) The Proponent must place the Technical and Business Submission Envelope and the Financial Submission Envelope in a third envelope or package (the “**Outer Envelope**”) and the Proponent must seal the Outer Envelope and must clearly label it with the following information:
 - (A) RFP Number;
 - (B) the name and address of the College and the name of the Contact Person;
 - (C) the Proponent’s full legal name and return address;
 - (D) the Submission Deadline; and
 - (E) the name of the Goods and/or Services to which the Proposal applies.
- (3) It is the sole responsibility of the Proponent to ensure that its Proposal is received by the College on or before the Submission Deadline.
- (4) A Proposal that is not submitted in accordance with the requirements of this RFP Section 5 may be rejected by the College and the College will not be under any obligation to notify the Proponent that the Proposal was not submitted in accordance with the requirements of this RFP Section 5. A Proponent has not successfully submitted a Proposal if it has not successfully submitted a Business Submission, a Technical Submission and a Financial Submission on or before the Submission Deadline.

5.2 Late Proposals

- (1) The College may, in its sole discretion, accept or reject Proposals that are submitted after the Submission Deadline.

5.3 Withdrawal of Proposals

- (1) A Proponent may withdraw its Proposal at any time during the RFP Process by giving written notice that is signed by an authorized representative of the Proponent to the Contact Person.

5.4 Amendment of Proposals

- (1) Proponents may amend their Proposals after submission but only if the Proposal is amended and resubmitted on or before the Submission Deadline in accordance with the following:
 - (a) the Proponent will withdraw its original Proposal by notifying the Contact Person in writing; and
 - (b) the Proponent will submit a revised replacement Proposal in accordance with the RFP Documents and no later than the Submission Deadline.

5.5 Proposal Irrevocability

- (1) Subject to the Proponent's right to withdraw its Proposal before the Submission Deadline, the Proponent's Proposal will be irrevocable and will remain in effect and open for acceptance for the number of days set out in the RFP Data Sheet after the Submission Deadline.

5.6 One Proposal per Person

- (1) Except as set out in the RFP Data Sheet and with the College's prior written consent,
 - (a) a Person will submit or participate in only one Proposal;
 - (b) no Person will be a subcontractor of a Proponent while submitting a Proposal individually or as part of a joint venture in the same RFP Process; and
 - (c) no Person will be a subcontractor of a Proponent in respect of more than one Proposal.
- (2) If a Person submits or participates in more than one Proposal in contravention of RFP Section 5.6(1) the College may, in its sole discretion, disqualify any or all of the Proposals submitted by that Person or in which that Person is a participant.

SECTION 6 – PROPOSAL EVALUATION

6.1 Evaluation of Proposals

- (1) The Proponents' Proposals will be reviewed and evaluated by the College on the basis of the evaluation criteria set out in the RFP Data Sheet and Schedule D – Submission Requirements and Evaluation Criteria (the "**Evaluation Criteria**"). Where two or more Colleges issued the RFP, as set out in RFP Section 1.1(1), the evaluation team may consist of representatives of one or more of the Colleges.
- (2) The College may require that Proponents receive a pre-established minimum passing score before being eligible to be considered further in the RFP Process (including being eligible for an interview). If the College intends to require a minimum passing score in the RFP Process, the required minimum passing score and any related requirements are set out in the RFP Data Sheet and Schedule D – Submission Requirements and Evaluation Criteria. Failure to achieve a minimum passing score may prevent a Proponent from being eligible to be considered further in the RFP Process.

- (3) The Proponents acknowledge that Proposals submitted in response to the RFP Process may not be directly comparable to one another. As a result, notwithstanding the general Evaluation Criteria set out in the RFP Data Sheet, the College intends to exercise a broad range of discretion in evaluating Proponents.

6.2 Steps in the Evaluation Process

(1) Step 1 – Compliance of Proposals with the RFP Documents

- (a) In Step 1, the College will open the Technical Submission and Business Submission only and will review the contents of the Technical Submission and Business Submission to assess whether the Technical Submission and Business Submission are in compliance with the terms and conditions of the RFP Documents, including whether all documents to be submitted in the Technical Submission and Business Submission have been appropriately submitted.
- (b) After Steps 1 to 4 in the evaluation process (RFP Sections 6.2(1), 6.2(2), 6.2(3) and 6.2(4)) have been completed and as a preliminary step after opening the Financial Submission pursuant to RFP Section 6.2(5), the College will review the contents of the Financial Submission to assess whether the Financial Submission is in compliance with the terms and conditions of the RFP Documents.
- (c) If, in the sole discretion of the College, a Proposal does not comply with the requirements set out in the RFP Documents, the College will, without liability, cost or penalty, eliminate the Proposal and the Proposal will not be given any further consideration. For the purposes of the RFP Documents, “comply” and “compliance” mean that the Proposal conforms to the requirements of the RFP Documents without material deviation or reservation. A “material deviation or reservation” is a statement or omission in the Proponent’s Proposal,
 - (i) that affects or could affect in any substantial way the scope, quality or performance of the Goods and/or Services under the Final Agreement arising from the RFP Process; or
 - (ii) that results in a material component of an RFP requirement for the Proponent’s Proposal (as set out in the RFP Documents) not being complied with.
- (d) The Proponent’s submission of a poor quality, but complete, Proposal will not be considered a failure to comply but will affect the Proponent’s Technical Score or the Proponent’s Business Score, as applicable.
- (e) If, during Step 1 of the evaluation process or at any time during the RFP Process, the College determines that a Proposal is non-compliant pursuant to RFP Section 6.2(1)(c), the College will declare the Proposal to be non-compliant and the Proposal will not be given any further consideration.
- (f) For the purpose of clarity, each Proponent acknowledges and agrees that the College’s evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the College may waive failures to comply that, in the College’s sole discretion, do not constitute a material deviation or reservation in accordance with RFP Section 6.2(1)(c).

(2) Step 2 – Review of the Technical Submission

- (a) In Step 2, the College will review and score the Technical Submission of the Proposals in accordance with the scoring breakdown set out in the RFP Data Sheet and Schedule D Part 2 to this RFP – Technical Submission Requirements and Evaluation Criteria (the “**Technical Score**”). Proponents must achieve a passing score on the Technical

Submission (the **"Passing Score (Technical)"**), if any, in order to be considered further in the evaluation process.

(b) The Passing Score (Technical), if any, is set out in the RFP Data Sheet.

(3) Step 3 – Optional Interviews, Site Visits, Demonstrations and Presentations

(a) In Step 3, the College may, in its sole discretion, conduct interviews, demonstrations, site visits or presentations if set out in the RFP Data Sheet. The evaluation of any interviews, demonstrations, site visits or presentations will be conducted in accordance with the process set out in the RFP Data Sheet.

(b) The College may conduct interviews, demonstrations, site visits or presentations with some or all Proponents.

(4) Step 4 – Review of the Business Submission

(a) In Step 4, the College will review and score the Business Submission of the Proposals in accordance with the scoring breakdown set out in the RFP Data Sheet and Schedule D Part 1 – Business Submission Requirements and Evaluation Criteria of this RFP (the **"Business Score"**). Proponents must achieve a passing score on the Business Submission (the **"Passing Score (Business)"**), if any, in order to be considered further in the evaluation process. The College may proceed with Step 2 and Step 4 of the evaluation process concurrently.

(b) The Passing Score (Business), if any, is set out in the RFP Data Sheet.

(5) Step 5 – Review of the Financial Submission

(a) In Step 5, the College will open the Financial Submission of,

(i) all Proposals; or

(ii) if the College has conducted interviews, demonstrations, site visits or presentations in Step 4, of only those Proposals of Proponents that have satisfied the requirements of Step 4,

and will review and establish a score for the Price Forms (the **"Price Score"**).

(6) Step 6 – Establishing a Final Proposal Score

(a) For the purpose of the evaluation process, the process that the College will apply with respect to the calculation of the final Proposal score (the **"Final Proposal Score"**) is set out in the RFP Data Sheet.

(b) The score established based on RFP Section 6.2(6)(a) will be the Final Proposal Score.

(7) Step 7 – Ranking the Proposals

(a) In Step 7, the College will rank only those Proposals that have,

(i) met all requirements in Steps 1 through 6; and

(ii) have received a Passing Score (Technical), if any, a Passing Score (Business), if any, and, if applicable, any other passing score set out in the RFP Data Sheet,

and the College will base the ranking on the Final Proposal Score.

6.3 References and Past Performance Issues

- (1) If specified in the RFP Data Sheet, Proponents are required to provide reference information using the form attached as Schedule F to the RFP (the “**Reference Form**”) that is to be completed by each of the Proponent’s references. Unless otherwise set out in the RFP Data Sheet, all references are to be with respect to goods and/or services that are similar to the Goods and/or Services and that were provided to similar institutions to the College in accordance with the instructions set out in the RFP Data Sheet. Unless otherwise set out in the RFP Data Sheet, the Proponent is required to provide a minimum of three references.
- (2) The College may, in its sole discretion, confirm the Proponent’s experience and ability to provide the Goods and/or Services by contacting the Proponent’s references. However, the College is under no obligation to contact references submitted by any Proponent and may determine, in its sole discretion, how and whether the responses of references will be taken into account in the evaluation process.
- (3) If the College has reliable information with respect to a Proponent’s poor performance in providing goods and/or services, including to the College, the College may take such past poor performance into account in its evaluation of the Proponent and the Proponent’s Proposal.

SECTION 7 – DISQUALIFICATION

7.1 Disqualification

- (1) The College may, in its sole discretion, disqualify a Proposal or cancel its decision to identify a Proponent as a Successful Proponent, at any time prior to the execution of the Final Agreement by the College, if,
 - (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.2(1)(c);
 - (b) the Proponent fails to cooperate in any attempt by the College to clarify or verify any information provided by the Proponent;
 - (c) the Proponent is not, in the College’s sole discretion, financially creditworthy;
 - (d) the Proponent does not, in the College’s sole discretion, satisfy the College’s security requirements;
 - (e) the Proponent contravenes RFP Sections 3.6 or 5.6(1);
 - (f) the Proponent fails to comply with Governing Law;
 - (g) the Proposal contains false or misleading information or the Proponent provides false or misleading information in its interview (if an interview is conducted);
 - (h) the Proposal, in the sole discretion of the College, reveals a perceived, potential or actual Conflict of Interest that cannot be managed, mitigated or minimized;
 - (i) the Proponent misrepresents any information provided in the Proposal;
 - (j) a Prequalified Proponent Change has occurred that has not been accepted by the College in accordance with RFP Section 3.20(3);
 - (k) a Post-Submission Proponent Change has occurred that has not been accepted by the College in accordance with RFP Section 3.20(5);
 - (l) the Proponent is the Acquiree in a change of Control;

- (m) the Proponent fails to disclose any information (including in any declaration or form attached to the Proposal in connection with the RFP Documents) that would materially adversely affect the College's evaluation of the Proposal;
- (n) The College becomes aware of a perceived, potential or actual Conflict of Interest as described in RFP Section 4.7 and the Proponent,
 - (i) does not receive a waiver from the College in accordance with RFP Section 4.7(5)(c) or does not receive a consent in accordance with RFP Section 3.7(2), as applicable; or
 - (ii) fails to substitute the Person giving rise to the perceived, potential or actual Conflict of Interest in accordance with RFP Section 4.7(5)(b);
- (o) in the 12 months prior to the Submission Deadline, the College became aware that the Proponent failed to disclose an actual Conflict of Interest in any past or current procurement issued by the College, unless the Proponent has demonstrated to the satisfaction of the College that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (p) there is evidence that the Proponent or any of its respective employees, agents, consultants, contractors, service providers or representatives directly or indirectly colluded with one or more other Proponents or any of their respective employees, agents, consultants, contractors, service providers or representatives in the preparation or submission of Proposals or otherwise contravened RFP Section 3.9;
- (q) the Proponent has breached any agreement with the College (whether or not the College exercises any right to terminate such agreement) or has breached the College's policies listed in the RFP Data Sheet;
- (r) the Proponent has been convicted of an offence in connection with any services rendered to the College;
- (s) the Proponent has breached an agreement for goods and/or services similar to the ones requested under the RFP Process with an entity other than the College;
- (t) the Proponent was convicted of a criminal offence within the three years immediately prior to the Submission Deadline;
- (u) a Proponent is, at the time of issuance of the RFP Documents or any time during the RFP Process, engaged in ongoing litigation against the College;
- (v) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (w) a Proponent engages in any activity which, at the sole discretion of the College, is contrary to the public interest or is harmful to the integrity or reputation of the College.

SECTION 8 – SUCCESSFUL PROPONENTS

8.1 Successful Proponents

- (1) The College will determine the Successful Proponent or Successful Proponents in accordance with the ranking of Proponents pursuant to RFP Section 6.2(7).
- (2) Notwithstanding anything else to the contrary in the RFP Documents, if the College, in its sole discretion, is of the opinion that a Proponent has submitted a price that is too low to be sustainable and to ensure the delivery of the Goods and/or Services in accordance with

the Draft Agreement, the College may decline to award a Final Agreement to that Proponent.

SECTION 9 – AGREEMENT FINALIZATION AND DEBRIEFING

9.1 Agreement Finalization

- (1) The College will notify the Successful Proponent(s) that it has been selected as a Successful Proponent.
- (2) At the time the Successful Proponent is notified pursuant to RFP Section 9.1(1), the Successful Proponent and the College will enter into discussions to finalize the Final Agreement
- (3) After the selection of the Successful Proponent, if any, the College may finalize the terms and conditions of the Final Agreement with the Successful Proponent, and, as part of that process, may in its sole discretion, negotiate changes, amendments or modifications to the Successful Proponent's Proposal or the Draft Agreement.
- (4) Each Successful Proponent is required to sign the Final Agreement in the same form and substance as the Draft Agreement attached as Schedule G to this RFP.
- (5) The Successful Proponent is required to, no later than ten days after receipt of the Final Agreement or such later date as may be specified in written Notice given by the College,
 - (a) enter into and execute the Final Agreement; and
 - (b) submit to the College a certificate of insurance which,
 - (i) references the Final Agreement by name;
 - (ii) confirms that the requirements set out in the Final Agreement have been met;
 - (iii) sets out any pertinent exclusions contained in the policy or policies; and
 - (iv) is otherwise acceptable to the College.
- (6) The Successful Proponent acknowledges and agrees that the entering into of an agreement by the College is conditional on and subject to the College obtaining any necessary authorizations and approvals required in connection with the Goods and/or Services, including, for certainty, the approval of any relevant government authority and the completion of background checks and security screenings of employees of the Successful Proponent, at the Successful Proponent's cost.
- (7) For clarity, where two or more Colleges jointly issued this RFP, as set out in RFP Section 1.1(1), the Successful Proponent will enter into a separate Final Agreement with each College.

9.2 Notification If Successful Or Not

- (1) The College will post a Notice that identifies the Successful Proponent. Proponents acknowledge that this notification may disclose the pricing information submitted by the Successful Proponent.

9.3 Debriefing

- (1) Unsuccessful Proponents may request a debriefing after the posting of the Notice pursuant to RFP Section 9.2(1) by contacting the Contact Person in writing. All Proponent requests should be in writing to the Contact Person no later than 60 calendar days following the posting of such notification. The College will determine the format, timing and contents of

the debriefing session. Generally, debriefings shall include a discussion regarding the unsuccessful Proponent's Proposal, why it was unsuccessful, and the relative advantages of the Successful Proponent's Proposal. The debriefing is not for the purpose of challenging the procurement process.

9.4 Dispute Resolution

- (1) With respect to any disputes that may arise in connection with this RFP Process. Where a supplier wishes to dispute the outcome of a bid, with the College's Purchasing Officer, the process outlined below is to be followed:
 - (a) The aggrieved party is to file their bid protest with the College's Purchasing Officer, within 10 business days of award announcement. The aggrieved party's filing should include:
 - The name and address of the supplier
 - Identification of the contract or bid solicitation being protested
 - Detailed and factual statement of the grounds for protest
 - Supporting documentation
 - Desired relief, action or ruling
 - (b) The Purchasing Officer, will respond to the aggrieved party, by email, within 10 business days of receiving the bid protest notice.
 - (c) If a resolution cannot be achieved, the aggrieved party must contact the Vice President, Finance, Administration and Indigenous Services and copy the Purchasing Officer, by email, within 10 business days of receiving the first response from the Purchasing Officer.
 - (d) The Vice President, Finance, Administration and Indigenous Services will respond to the aggrieved party, by email, within 10 business days of receiving the bid protest notice.
 - (e) If a resolution cannot be achieved, the aggrieved party must contact the President & CEO of the College and copy the Vice President, Finance, Administration and Indigenous Services and Purchasing Officer, by email, within 10 business days of receiving the last response from the Vice President, Finance, Administration and Indigenous Services.
 - (f) The final decision on the issue will be made by the President & CEO, and will be resolved within 10 business days of receiving the bid protest.

SECTION 10 – RIGHTS OF THE COLLEGE

10.1 General Rights of the College

- (1) The College may, in its sole discretion and at any time during the RFP Process, take any one or all of the following actions:
 - (a) reject or disqualify any or all of the Proposals;
 - (b) accept any Proposal, including a Proposal that is not submitted in accordance with the requirements set out in RFP Section 5.1;
 - (c) if only one Proposal is received, either elect to accept or reject it;
 - (d) elect not to proceed with the RFP Process;
 - (e) alter the Timetable;

- (f) change the RFP Process or any other aspect of the RFP Documents; and
 - (g) cancel the RFP Process and subsequently conduct another competitive process for the same goods and/or services that are the subject matter of the RFP Documents or subsequently enter into negotiations with any Person or Persons with respect to the goods and/or services that are the subject matter of the RFP Documents.
- (2) If the College determines that all or the majority of Proposals submitted are non-compliant, the College may take any action in accordance with RFP Section 10.1(1).
 - (3) The College will not be liable for any expense, cost, loss or damage occurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action referred to in RFP Section 10.1(1) or RFP Section 10.1(2).
 - (4) If a Successful Proponent fails or refuses to enter into and execute the Final Agreement and provide the documentation in accordance with RFP Section 9.1(5), the College may, in its sole discretion, take any one or all of the following actions:
 - (a) terminate all discussions to enter into the Final Agreement with that Successful Proponent and cancel its identification of a Proponent as a Successful Proponent;
 - (b) select another Proponent to enter into the Final Agreement;
 - (c) take any action in accordance with RFP Section 10.1(1); and
 - (d) pursue any other remedy available to the College under Governing Law.
 - (5) The College may, in its sole discretion, cancel its decision to enter into a Final Agreement with a Successful Proponent if,
 - (a) the College elects to exercise its discretion pursuant to RFP Section 7.1, RFP Section 10.1(1) or RFP Section 10.1(4); or
 - (b) any other material change has occurred with respect to the Successful Proponent's Proposal.

10.2 Limit on Liability

- (1) The Proponent and all other entities participating in the RFP Process agree that if the College is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of the RFP Process, the total liability of the College to any Proponent or any other entity participating in the RFP Process, and the aggregate amount of damages recoverable against the College for any matter relating to or arising from any act or omission by any one or more of them, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the College will be no greater than the Proponent's cost of preparing its Proposal or the liability cap amount set out in the RFP Data Sheet, whichever is less.

SECTION 11 – DEFINITIONS

11.1 General

- (1) In the RFP Documents, the singular is deemed to include the plural and the plural is deemed to include the singular, except where the context otherwise requires.
- (2) All references in the RFP Documents to “discretion” or “sole discretion” means in the sole and absolute discretion of the party exercising the discretion.

11.2 RFP Definitions

Whenever used in the RFP Documents,

- (1) **“Acquiree”** is defined in RFP Section 3.20(6);
- (2) **“Acquirer”** is defined in RFP Section 3.20(6);
- (3) **“Addendum”** means a written addendum to the RFP Documents issued by the College as set out in RFP Section 3.4;
- (4) **“Advisor”** means any Person retained to provide professional advice to the College or a Proponent, as applicable;
- (5) **“Affiliate”** means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (6) **“Background Information”** is defined in RFP Section 2.1(3);
- (7) **“Business Day”** means any day other than Saturday, Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the city of Toronto, Ontario;
- (8) **“Business Score”** is defined in RFP Section 6.2(4)(a);
- (9) **“Business Submission”** is defined in RFP Section 5.1(4)(d)(iv);
- (10) **“College”** is defined in RFP Section 1.1(1);
- (11) **“Commercially Confidential RFIs”** is defined in RFP Section 3.2(1)(b)(ii);
- (12) **“Confidential Information”** is defined in RFP Section 3.11(1);
- (13) **“Conflict of Interest”** is defined in RFP Section 4.7(1);
- (14) **“Conflict of Interest Declaration”** means the conflict of interest declaration attached as Schedule C – Conflict of Interest Declaration to this RFP;
- (15) **“Contact Person”** means the contact person listed in the RFP Data Sheet in respect of RFP Sections 1.2(1) and 3.2(1);
- (16) **“Control”** means, with respect to any Person at any time, (i) holding, whether directly or indirectly, as owner or other beneficiary (other than solely as the beneficiary of an unrealized security interest) securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint 50 percent or more of the individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person, whether direct or indirect and whether through the ownership of securities or ownership interests or by contract, trust or otherwise;
- (17) **“Draft Agreement”** is defined in RFP Section 2.1(1)(h);
- (18) **“Evaluation Criteria”** is defined in RFP Section 6.1(1);
- (19) **“Final Agreement”** is defined in RFP Section 1.1(2);
- (20) **“Final Proposal Score”** is defined in RFP Section 6.2(6);
- (21) **“Financial Submission”** is defined in RFP Section 5.1(4)(d)(vi);
- (22) **“Financial Submission Envelop”** is defined in RFP Section 5.1(3)(d)(ii);
- (23) **“FIPPA”** is defined in RFP Section 3.10(1);

- (24) **“General RFIs”** is defined in RFP Section 3.2(1)(b)(i);
- (25) **“Goods and/or Services”** is defined in RFP Section 1.1(1);
- (26) **“Governing Law”** means the laws of Ontario and the applicable laws of Canada;
- (27) **“Identified Proponent Party”** means any of the Persons identified in the Proponent’s Prequalification Submission, including for clarity, proposed subcontractors, key individuals or Joint Venture Participants;
- (28) **“includes”** and **“including”** means “includes without limitation” and “including without limitation” respectively;
- (29) **“Ineligible Person’s Affiliate”** is defined in RFP Section 3.7(1);
- (30) **“Ineligible Persons”** is defined in RFP Section 3.7(1);
- (31) **“Joint Venture Participant”** is defined in RFP Section 3.16(2)(b);
- (32) **“Joint Venture Proponent”** is defined in RFP Section 3.16(2)(b);
- (33) **“Notice”** means a written notice issued by the College as set out in RFP Section 3.3;
- (34) **“Outer Envelope”** is defined in RFP Section 5.1(3)(d)(iii)
- (35) **“Participant in Charge”** is defined in RFP Section 3.16(3)(c)(ii);
- (36) **“Passing Score (Business)”** is defined in RFP Section 6.2(4)(a);
- (37) **“Passing Score (Technical)”** is defined in RFP Section 6.2(2)(a);
- (38) **“Person”** means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted;
- (39) **“Post-Submission Proponent Change”** means:
- (a) an actual or proposed change of Control of the Proponent;
 - (b) a change in circumstances that may materially adversely affect a Proponent in a way which could impair the Proponent’s ability to perform its respective obligations under or in connection with the Draft Agreement; or
 - (c) the withdrawal of any Joint Venture Participant from a Joint Venture Proponent and the proposed substitution of such Person;
- (40) **“Prequalification Submission”** is defined in RFP Section 3.16(1);
- (41) **“Prequalified Parties”** is defined in RFP Section 1.1(2)(b);
- (42) **“Prequalified Proponent Change”** means:
- (a) an actual or proposed change of Control of the Proponent or any Identified Proponent Party;
 - (b) a change in circumstances that may materially adversely affect a Proponent or an Identified Proponent Party in a way which could impair the Proponent’s or the Identified Proponent Party’s ability to perform their respective obligations under or in connection with the Draft Agreement;

- (c) the withdrawal of any of the Identified Proponent Parties and the proposed substitution of such person or entity; or
 - (d) the proposed addition of any person or entity as an Identified Proponent Party;
- (43) **"Price Form"** means the form provided in Schedule D Part 3 to this RFP;
 - (44) **"Price Score"** is defined in RFP Section 6.2(5);
 - (45) **"Proponent Representative"** is defined in RFP Section 1.3(1);
 - (46) **"Proponents"** is defined in RFP Section 1.1(2);
 - (47) **"Proponents Meeting"** is defined in RFP Section 3.5(1);
 - (48) **"Proposal"** is defined in RFP Section 1.1(2);
 - (49) **"Proposal Information"** is defined in RFP Section 3.13(4);
 - (50) **"Proposal Information Licence"** is defined in RFP Section 3.13(3);
 - (51) **"Proposal Submission Form"** means the Proposal Submission Form attached as Schedule B to this RFP;
 - (52) **"Reference Form"** is defined in RFP Section 6.3(1);
 - (53) **"RFIs"** is defined in RFP Section 3.2(1);
 - (54) **"RFP"** is defined in RFP Section 2.1(1)(a);
 - (55) **"RFP Data Sheet"** means Schedule A to this RFP;
 - (56) **"RFP Documents"** is defined in RFP Section 2.1(1);
 - (57) **"RFP Number"** is defined in RFP Section 1.1(1);
 - (58) **"RFP Process"** is defined in RFP Section 1.1(3);
 - (59) **"Submission Deadline"** is defined in RFP Section 3.1(1);
 - (60) **"Successful Proponent"** is defined in RFP Section 1.1(2);
 - (61) **"Technical & Business Submission envelope"** is defined in RFP Section 5.1(3)(d)(i)
 - (62) **"Technical Score"** is defined in RFP Section 6.2(2)(a);
 - (63) **"Technical Submission"** is defined in RFP Section 5.1(4)(d)(v); and
 - (64) **"Timetable"** is defined in RFP Section 3.1(1).