

RFP #163



IESO Market Settlement Service Organization Control 1 & 2 Audits Request for Proposal

Date Issued: April 8, 2018
Submission Deadline: **May 9, 2018 at 3:00 p.m.**

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Part 1. Introduction

1.1 Invitation to Proponents

This Request for Proposals ("RFP") is an invitation by the Independent Electricity System Operator (the "IESO") to prospective Proponents to submit proposals to conduct multi-year audits of the IESO's market settlement functions against two standards: (1) the Canadian Standard on Assurance Engagements (CSAE) 3416 to produce a Service Organization Control (SOC) 1 type 2 report; and (2) the American Institute of Certified Public Accountant (AICPA) Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy to produce a SOC 2 type 2 report focused on security and confidentiality (collectively, the "**Deliverables**"). The IESO requires that these audits, producing two audit reports, be performed in each of the following years: 2019, 2021, and 2023. The reviews are expected to cover the period January – September. Engagement on this series of audits is expected to commence September 2018.

1.2 Context

The IESO is required by Chapter 9, Section 6.17 of the Market Rules to have an independent external audit of settlement functions performed and reported to the Board of Directors. The audit will serve to examine and evaluate compliance with management control objectives and operational effectiveness of settlement processes and procedures for the IESO-administered markets.

The resulting audit reports, including the description of tests of controls and results, are intended solely for the information and use of the IESO, user entities of IESO's market settlements system during some or all of the period of the audits, and the independent auditors of such user entities, who have a sufficient understanding to consider it, along with other information including information about controls implemented by user entities themselves, when assessing the risks of material misstatements of user entities' financial statements. Each audit report is required to be made available to market participants, upon request, in accordance with the Market Rules.

1.3 Background - Independent Electricity System Operator (IESO)

The Independent Electricity System Operator ("IESO") works at the heart of Ontario's power system – ensuring there is enough power to meet the province's energy needs in real time while also planning and securing energy for the future. It does this by:

- balancing the supply of and demand for electricity in Ontario and directing its flow across the province's transmission lines;
- planning for the province's short term, medium term and long term energy needs and securing clean sources of supply to meet those needs;
- overseeing the electricity wholesale market where the market price of electricity is set; and
- engaging in activities that promote electricity conservation and the efficient use of electricity.

Proponents should be aware that the IESO has both unionized and non-unionized employees. There are two unions within the IESO, namely, the Power Workers' Union and the Society of Energy Professionals.

1.4 RFP Not Binding

This RFP is not intended to create and does not create a formal legally binding bidding process. This RFP does not commit the IESO in any way to select a Preferred Proponent, or to proceed to negotiations for an Agreement, or to award any Agreement, and the IESO reserves the complete right, at any time to reject all Proposals, and to terminate this RFP process. This RFP is not intended to create, and should not be construed as creating, contractual relations between the IESO and any Proponent.

1.5 RFP Timetable

The RFP timetable is tentative only and may be changed by the IESO in its discretion.

The following is the schedule for this RFP (all times noted in EDT/EST, as applicable):

Issue Date of RFP	April 8, 2018
Proponents' Deadline for submitting Questions	3:00 pm on April 24, 2018
Proponent's deadline for submitting a Non-Disclosure Agreement	3:00 pm on April 24, 2018
Posting of Responses to Questions	April 26, 2018
Deadline for Issuing Addenda	April 26, 2018
Proposal Submission Deadline	3:00 pm on May 9, 2018

1.6 IESO Contact

Name : Sheri Bizarro

E-mail : sheri.bizarro@ieso.ca and rfp.info@ieso.ca

1.7 Definitions

Unless otherwise specified in this RFP, capitalized words and phrases have the following meaning in this RFP.

"Agreement" means the standard form of agreement between the IESO and a Preferred Proponent for the delivery of the Deliverables, as set out in Appendix E, or as may otherwise be agreed to by the IESO.

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory and other holidays which the IESO has elected to be closed for business.

"Conflict of Interest" has the meaning given to it in Appendix A (Registration Form).

"Deliverables" has the meaning given to it in Section 1.1

"IESO Contact" means the person identified in Section 1.6.

"Market Rules" means the Market Rules for the Ontario Electricity Market made under the authority and for the purposes of the Electricity Act, 1998, S.O. 1998, c. 15, Sched. A, as amended.

"Personal Information" has the meaning set out in the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, as may be amended from time to time.

"Preferred Proponent" means a Proponent selected by the IESO to enter into negotiations for an Agreement.

"Proponent" means an entity who has submitted a response to this Request for Proposal.

"Proposal" means a Proponent's formal response to this RFP submitted in accordance with PART 4 – Proposal Submission Instructions.

"Service Provider" means a Preferred Proponent which ultimately executes an Agreement with the IESO.

"Technical Submission" means the content submitted by a Proponent as outlined in Section 3 of Appendix C, inclusive of all Curriculum Vitae (if requested), and exclusive of the appendices identified in PART 4.3i) and 4.3iv) of this RFP.

1.8 Discretion

Any reference to the IESO's discretion in this RFP shall mean the IESO's sole and absolute discretion.

[End of PART 1]

Part 2. Evaluation & Selection Process

The IESO will conduct the evaluation of the Proposals in the following four stages:

2.1 Stage I – Compliance with Submission Criteria

Stage I of the evaluation process will consist of a review of each Proposal to determine which Proposals comply with the submission criteria set out in PART 4 – Proposal Submission Instructions.

2.2 Stage II – General Criteria

Stage II of the evaluation process will consist of evaluating Proposals based on the criteria set out in Section 3 of Appendix C – Proposal Content and Rated Criteria.

2.3 Stage III – Short List and Further Evaluation

The IESO may, in its discretion, short list one or more Proponents for further evaluation, including by way of interview, presentation and/or demonstration, and/or request for references.

2.4 Stage IV – Evaluation of Pricing

Stage IV of the evaluation process will consist of evaluating pricing based on the criteria set out in Section 3.1.4 of Appendix C – Proposal Content and Rated Criteria. At the conclusion of Stage IV, a Preferred Proponent or Preferred Proponents will, subject to the express and implied rights of the IESO, be selected.

2.5 Stage V – Negotiation of Agreement(s) and Award

If the IESO selects a Preferred Proponent or Preferred Proponents, then it may:

- (a) enter into an Agreement with the Preferred Proponent(s);
- (b) enter into discussions with the Preferred Proponent(s) to clarify any outstanding issues and attempt to finalize the terms of the Agreement(s), including financial terms; or
- (c) if at any time the IESO reasonably forms the opinion that a mutually acceptable Agreement is not likely to be reached within a reasonable time the IESO may then either open discussions with another Proponent or terminate the RFP and retain or obtain the Deliverables in some other manner.

[End of PART 2]

Part 3 - Terms & Conditions of the RFP Process

3.1 IESO's Information in RFP Only an Estimate

The IESO and its advisors make no representation, warranty or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only and are for the sole purpose of indicating to Proponents the general volume of the work.

It is the Proponent's responsibility to avail itself of all the necessary information to prepare a Proposal in response to this RFP.

3.2 Proponents Shall Bear Their Own Costs

The Proponent shall bear all costs associated with or incurred in the preparation and presentation of its Proposal including, if applicable, costs incurred for interviews, presentations or demonstrations.

3.3 Communication during the Procurement Process

3.3.1 Proponents to Review RFP

Proponents are advised to examine all of the documents comprising this RFP and:

- (a) are requested to report any errors, omissions or ambiguities; and
- (b) may direct questions or seek additional information,

in writing by e-mail on or before the Proponents' Deadline for Questions to the IESO Contact. All questions submitted by Proponents by e-mail to the IESO Contact shall be deemed to be received once the e-mail has entered into the IESO Contact's e-mail inbox. No such communications should be directed to anyone other than the IESO Contact.

It is the responsibility of the Proponent to seek clarification from the IESO Contact on any matter it considers to be unclear. The IESO will not be responsible for any misunderstanding on the part of the Proponent concerning this RFP or its process.

The IESO is under no obligation to provide additional information but may do so at its discretion.

To ensure consistency and quality of information provided to Proponents, the IESO will, where appropriate, respond to enquiries of general concern by way of a written response communicated to all Proponents, without revealing the sources of the enquiries.

3.3.2 All New Information to Proponents by way of Addenda

This RFP will only be amended by way of addenda in accordance with this section. Such addenda will either be (a) posted on any site on which this RFP was posted, or (b) emailed if the RFP was not posted, by the date specified in the RFP timetable.

Each addendum shall form an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining and reviewing all addenda issued by the IESO.

3.3.3 Post-Deadline Addenda and Extension of Proposal Submission Deadline

If any addendum is issued after the Deadline for Issuing Addenda, the IESO may at its discretion extend the Proposal Submission Deadline for a reasonable amount of time.

3.3.4 Prohibited Proponent Communications

The Proponents shall not engage in any communication which would constitute or create a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Registration Form.

Communication by a Proponent with any IESO representative other than the IESO Contact may result in disqualification of the Proponent's Proposal.

3.3.5 Proponent Not to Communicate With Media

A Proponent should not at any time directly or indirectly communicate with the media in relation to this RFP or any contract awarded pursuant to this RFP without first obtaining the written permission of the IESO Contact.

3.3.6 IESO May Contact Proponent for Clarification

The IESO may contact the Proponent to request clarification (or the submission of supplementary written information in relation thereto) with respect to the Proposal and incorporate a Proponent's response to the request for clarification into the Proponent's Proposal.

3.4 Conduct

3.4.1 Conflict of Interest

The IESO may disqualify a Proponent for any conduct, situation or circumstance that constitutes a real or perceived Conflict of Interest as determined by the IESO.

The IESO may also disqualify a Proponent for:

- (i) a failure to disclose an actual or potential Conflict of Interest;
- (ii) a failure to comply with any requirements prescribed by the IESO to resolve a Conflict of Interest; or
- (iii) a situation or circumstance where the Proponent's Conflict of Interest cannot be resolved.

3.4.2 Illegal or Unethical Conduct

Proponents shall not engage in any illegal bidding practices, including such activities as bid-rigging, price-fixing, bribery, fraud or collusion. Proponents shall not engage in any unethical conduct, including lobbying or other inappropriate communications, offers of gifts to IESO

employees, officers or board members, deceitfulness, submitting Proposals containing misrepresentations or other misleading or inaccurate information, or any other conduct that compromises or may be seen to compromise the integrity of the Proponent and the competitive procurement process.

The IESO may disqualify the Proponent from the RFP process if the Proponent engages in any of the foregoing activities or conduct, or if the Proponent's Proposal contains misrepresentations or any other inaccurate, misleading or incomplete information.

3.5 References and Past Performance

The IESO's final selection of the Preferred Proponent(s) may consider any information provided by the Proponent's references or informed by past performance.

3.6 Negotiations

3.6.1 Timeframe for Negotiations

Proponents should note that the IESO does not intend to engage in lengthy negotiations with the Preferred Proponent(s). A Proponent that is invited to enter into contract negotiations with the IESO should therefore be prepared to provide any requested information in a timely manner and to conduct its negotiations expeditiously.

3.6.2 Process Rules for Negotiations

Any negotiations between the IESO and a Preferred Proponent will be subject to the process rules contained in this PART 3 – Terms and Conditions of the RFP Process and in the Registration Form (Appendix A) and will not constitute a legally binding offer to enter into a contract on the part of the IESO or the Preferred Proponent(s). Negotiations may include requests by the IESO for supplementary information from the Preferred Proponent(s) to verify, clarify or supplement the information provided in its Proposal or to confirm the evaluation outcome, and may include requests by the IESO for improved pricing from the Preferred Proponent(s).

3.6.3 Terms and Conditions of Agreement

The standard terms and conditions of Agreement (Appendix E) will form the starting point for any negotiations between the IESO and the Preferred Proponent(s).

Proponents should note that the IESO makes no guarantee to accept changes to the standard terms and conditions that may have been negotiated previously between the IESO and a Proponent on any other engagement.

3.7 Security Checks

If required by the IESO, the Preferred Proponent shall provide documentation so that the IESO may conduct criminal record searches for all of the Preferred Proponent's personnel that will be

assigned to perform the work, prior to any work under the Agreement commencing.

If such criminal record searches are required, the final Agreement between the IESO and the Preferred Proponent will be conditional upon all of the Preferred Proponent's personnel that will be assigned to perform the work under the Agreement passing all applicable criminal record searches prior to the required engagement start date.

The Preferred Proponent shall also require these personnel to confirm their commitment to abide by the security and confidentiality obligations of the IESO as set out under the Agreement, and as may otherwise be specified by the IESO, including the requirement to successfully complete any applicable IESO information security awareness training delivered by the IESO's security team prior to the required engagement start date.

3.8 Notification of Outcome and Debriefing

3.8.1 Notification to Proponents of Outcome of Procurement Process

Once the Preferred Proponent(s) and the IESO execute the Agreement, the other Proponents will be notified by the IESO in writing of the outcome of the procurement process, including the name(s) of the Preferred Proponent(s). If the procurement process is cancelled and no Agreement is entered into by the IESO and a Preferred Proponent(s), all Proponents will be notified of such cancellation by the IESO in writing.

3.8.2 Debriefing

The IESO may offer a debriefing once the Agreement between the IESO and a Preferred Proponent(s) has been executed or the procurement process has been cancelled. The IESO will notify Proponents of any such debriefing in writing concurrently with the outcome of the procurement process. If a debriefing is offered, Proponents may confirm a request for a debriefing within 30 days following the date of such written communication from the IESO. All requests should be in writing and addressed to the IESO Contact. The intent of the debriefing is to aid the Proponent in presenting a better Proposal in subsequent procurement opportunities. Any debriefing provided is not for the purpose of providing an opportunity to challenge the procurement process.

3.9 Freedom of Information and Protection of Privacy Act

The *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.F.31, as amended, applies to information provided to the IESO by a Proponent. A Proponent should clearly identify any information in its Proposal or any accompanying or supplemental documentation which is supplied in confidence and for which confidentiality is to be maintained by the IESO. The confidentiality of such information will be maintained by the IESO, except as otherwise required by law or by order of a court or other administrative body. Proponents are advised that their Proposals will, as necessary, be disclosed on a confidential basis, to the IESO's advisers retained for the purpose of evaluating or participating in the evaluation of their Proposals.

By submitting any Personal Information requested in this RFP, Proponents are agreeing to the use of such information as part of the evaluation process, for any audit of this procurement process and for contract management purposes.

3.10 Make Public Proponent Names

The IESO may make public the names of any or all Proponents who participated in this procurement process as well as any Proponents who may have been invited to submit a Proposal, but did not.

3.11 Acceptance of Proposals

The IESO may accept Proposals which do not comply with the requirements of this RFP.

3.12 No Incorporation by Reference

The entire content of the Proponent's Proposal should be submitted in a fixed form and the content of websites or other external documents incorporated by reference into the Proponent's Proposal will not be considered to form part of its Proposal.

3.13 Proposal to be Retained by the IESO

The IESO will not return the Proposal or any accompanying or supplemental documentation submitted by a Proponent, regardless of whether they are amended or withdrawn.

3.14 No Contract

By submitting a Proposal and participating in the process as outlined in this RFP, Proponents expressly agree that no contract or agreement of any kind is formed under, or arises from, this RFP, prior to the signing of a formal written Agreement.

3.15 IESO's Right to Select One or more Preferred Proponent(s)

The IESO reserves the right and discretion to divide up the Deliverables, either by scope, geographic area, or other basis as the IESO may decide, and to select one or more Preferred Proponents to enter into discussion with the IESO for one or more Agreements to perform a portion or portions of the Deliverables. If the IESO exercises its discretion to divide up the Deliverables, the IESO will do so reasonably having regard for the RFP and the basis of Proposals.

3.16 Governing Law of RFP Process

This RFP process shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

3.17 No Claims

Neither party shall have the right to make claims against the other (including any application or other proceeding for a review by any court or other body) with respect to this RFP process, the

selection of any Proponent, the failure to be selected to enter into a formal written agreement, or the failure to honour submissions prior to the execution of a formal written agreement.

[End of PART 3]

Part 4. Proposal Submission Instructions

4.1 Proponents to Follow Instructions

Proponents should structure their Proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a Proposal should reference the applicable section numbers of this RFP where that request was made.

4.2 Proposals in English

All Proposals must be in English only. Any Proposals received by the IESO that are not entirely in the English language will be disqualified.

4.3 Proposals Submitted Only in Prescribed Manner

Proposals should be submitted by the following method:

A Proponent should submit **one (1) original** of the Proposal in either Microsoft Word or searchable .PDF format **by email** to the IESO Contact email address listed in PART 1.6 above. Proponents must submit separate electronic files for:

- i) Appendix A (Registration Form), Appendix B (Reference Form) and Appendix E (Standard Terms and Conditions of Agreement);
- ii) Appendix F (Non-Disclosure Agreement Form) by the required timeline as outlined in Section 1.5 of Part 1;
- iii) the Technical Submission as outlined in Section 3 of Appendix C (Proposal Content and Rated Criteria); and
- iv) the pricing submission as outlined in Appendix D (Pricing Form).

Proponents who fail to submit their responses in the manner outlined in this PART 4 may be deemed to be non-compliant and may be disqualified at the discretion of the IESO.

Proponents should note that the **total file size** (including all attachments and Appendices) may not exceed 30 MB. Proposal submission emails should reference the following in the subject line:

IESO Market Settlement Service Organization Control 1 & 2 Audits RFP#163

4.4 Proposals Should Be Submitted On Time at Prescribed Location

Proposals should be submitted only in the prescribed manner on or before the Proposal Submission Deadline indicated in Section 1.5. Proposals submitted to another location or after the Proposal Submission Deadline will be deemed late and may be disqualified. IESO is not responsible for any technical difficulties experienced by the Proponent in submitting its Proposal. Proposals submitted after the Proposal Submission Deadline as a result of technical difficulties will be deemed late and may be disqualified.

For the purpose of calculating time the submission will be deemed to have been received at the time indicated in the time stamp in the header of the email (i.e. the “sent” time) in the IESO Contact’s email inbox.

4.5 Amending or Withdrawing Proposals Prior to Proposal Submission Deadline

At any time prior to the Proposal Submission Deadline, a Proponent may amend or withdraw a submitted Proposal. The right of Proponents to amend or withdraw includes amendments or withdrawals wholly initiated by Proponents and amendments or withdrawals in response to subsequent information provided by addenda.

Any amendment should clearly indicate what part(s) of the Proposal the amendment is intending to replace.

A notice of amendment or withdrawal should be sent to the IESO Contact prior to the Proposal Submission Deadline and should be signed by an authorized representative of the Proponent.

4.6 Withdrawing Proposals After the Proposal Submission Deadline

Proponents may withdraw a submitted Proposal at any time prior to the execution of an Agreement resulting from this RFP.

A written notice of withdrawal should be sent to the IESO Contact and should be signed by an authorized representative of the Proponent.

[End of PART 4]

Appendix A – Registration Form

TO : Independent Electricity System Operator

FROM : [Insert Name of Proponent]

RE : IESO Market Settlement Service Organization Control 1 & 2 Audits RFP#163

1. PROPONENT INFORMATION

- (a) The full legal name of the Proponent is:

- (b) If applicable, any other relevant name under which the Proponent carries on business is:

- (c) If applicable, the jurisdiction under which the Proponent was formed and governed by is:

- (d) The name, address, telephone number and e-mail address of the contact person for the Proponent is:

- (e) Whether the Proponent is an individual, a sole proprietorship, a corporation, a partnership, a joint venture, an incorporated consortium or a consortium that is a partnership or other legally recognized entity:

2. RFP NOT A BINDING PROCUREMENT PROCESS

The Proponent has carefully examined the RFP documents, including any addenda, and has a clear and comprehensive knowledge of the Deliverables required under the RFP. By submitting the Proposal, the Proponent acknowledges and confirms its understanding that the RFP is not a binding procurement process and that no contractual relations are created between the IESO and the Proponent as a result of the issuance of the RFP or the submission of the Proposal.

3. ADDENDA

The Proponent confirms that it has read and accepted all addenda issued by the IESO prior to the Deadline for Issuing Addenda. The onus remains on the Proponent to make any necessary amendments to its Proposal based on the addenda.

4. CONFLICT OF INTEREST

Prior to completing this portion of the Registration Form, Proponents should refer to the definition of Conflict of Interest set out below.

"**Conflict of Interest**" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the Proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to (i) having or having access to information in the preparation of its Proposal that is confidential to the IESO and not available to other Proponents; (ii) communicating with any person with a view to influencing preferred treatment in the RFP process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the competitive RFP process and render that process non-competitive and unfair; or
- (b) in relation to the performance of its contractual obligations in an IESO contract, the Proponent's other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations.

Proponents are instructed to select the correct statement below:

- ☐ The Proponent declares that there is **no** actual or potential Conflict of Interest relating to the preparation of its Proposal.
- ☐ The Proponent declares that there **is** an actual or potential Conflict of Interest relating to the preparation of its Proposal, and/or the Proponent foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the RFP.

If the Proponent declares an actual or potential Conflict of Interest by marking the box above, the Proponent must set out below details of the actual or potential Conflict of Interest:

5. INDEPENDENT CONTRACTORS & FORMER IESO EMPLOYEES

The following section is to be completed only if the Proponent is an independent contractor. If the Proponent is not an independent contractor, the following section need not be completed.

Proponents are instructed to select the correct statement below:

- ☐ The Proponent declares that they are **not** a former employee of the IESO or its predecessor organizations, which for greater certainty includes the Ontario Power Authority;
- ☐ The Proponent declares that they are a former employee of the IESO or its predecessor organizations, which for greater certainty includes the Ontario Power Authority.

The Proponent hereby acknowledges and agrees that where the Preferred Proponent is an independent contractor, the IESO may impose restrictions on the eligibility of such Preferred Proponent on the term or value of any Agreement with the Preferred Proponent resulting from this RFP.

6. IESO POLICIES

The Proponent hereby acknowledges that if it is the Preferred Proponent it will be required to read, understand and agree to comply with the IESO policies located on www.ieso.ca, and as may be outlined in the any Agreement resulting from this RFP.

7. DISCLOSURE OF INFORMATION

The Proponent hereby agrees that any information provided in this Proposal, even if it is identified as being supplied in confidence, may be disclosed by the IESO where required by law or if required by order of a court, tribunal or other governmental or administrative body. The Proponent hereby consents to the disclosure, on a confidential basis, of this Proposal by the IESO to the IESO's advisers retained for the purpose of evaluating or participating in the evaluation of this Proposal.

8. TAX REPRESENTATION

Please select one:

- ☐ The Proponent represents and warrants that the Proponent is a resident of Canada.
- ☐ The Proponent represents and warrants that the Proponent is a non-resident of Canada.

The Proponent understands that if it is a non-resident of Canada, in accordance with the provisions of the *Income Tax Act* (Canada), if the IESO enters into an Agreement with the Proponent, then the IESO will withhold and submit 15% of fees charged on each invoice for Deliverables performed in Canada unless the Contractor obtains from Canada Revenue Agency a waiver or reduction in the amount to be withheld.

Signature of Proponent's Authorized Representative

Name and Title : _____

Date : _____

Appendix B – Reference Form

Proponents are requested to provide at least three (3) references from clients who have, in the last five (5) years, obtained similar goods or services to those requested in this RFP from the Proponent.

Company Name	:	
Company Address	:	
Contact Name	:	
Contact Telephone Number	:	
Date Work Undertaken	:	
Nature of Assignment	:	

Company Name	:	
Company Address	:	
Contact Name	:	
Contact Telephone Number	:	
Date Work Undertaken	:	
Nature of Assignment	:	

Company Name	:	
Company Address	:	
Contact Name	:	
Contact Telephone Number	:	
Date Work Undertaken	:	
Nature of Assignment	:	

Appendix C – Information & Requirements

SECTION 1 – OVERVIEW

1.1 Context

The IESO is required by Chapter 9, Section 6.17 of the Market Rules to have an independent external audit of settlement functions performed and reported to the Board of Directors. The audit will serve to examine and evaluate compliance with management control objectives and operational effectiveness of settlement processes and procedures for the IESO-administered markets.

The resulting audit reports, including the description of tests of controls and results, are intended solely for the information and use of the IESO, user entities of IESO's market settlements system during some or all of the period of the audits, and the independent auditors of such user entities, who have a sufficient understanding to consider it, along with other information including information about controls implemented by user entities themselves, when assessing the risks of material misstatements of user entities' financial statements. Each audit report is required to be made available to market participants, upon request, in accordance with the Market Rules.

[End of Section 1]

SECTION 2 – DELIVERABLES

2.1 Objective(s)

In each of 2019, 2021, and 2023, the Preferred Proponent will be expected to produce two reports regarding the settlement processes for the IESO-administered markets and related programs: Service Organization Control ("SOC") 1, type 2 report and Service Organization Control 2, type 2 report. The IESO administered markets encompass the three markets listed below:

- Real-time Markets: energy market and operating reserve market;
- Financial Markets: transmission rights market; and
- Procurement Markets: contracted ancillary services and reliability must-run contracts.

The objectives of each audit, as per Chapter 9, Section 6.17.3, are to accomplish the following:

- Gauge the performance of the settlement process in meeting the objectives of the Market Rules;
- Review the accuracy and timeliness of the production of settlement statements, including settlement calculations and financial allocations;

- Review the accuracy and timeliness of the production of invoices and supporting market and system information;
- Review the reliability and integrity of the market and system operational data used in the settlement processes and procedures;
- Review the reliability and security of the information technology system infrastructure used to measure, validate, classify, compute and report settlement information;
- Review the adequacy of settlement processes and procedures to safeguard confidential information; and
- Review the adequacy and effectiveness of risk management controls of the settlement processes and tools, including the effectiveness of the disaster recovery plan.

The Market Rules further state that:

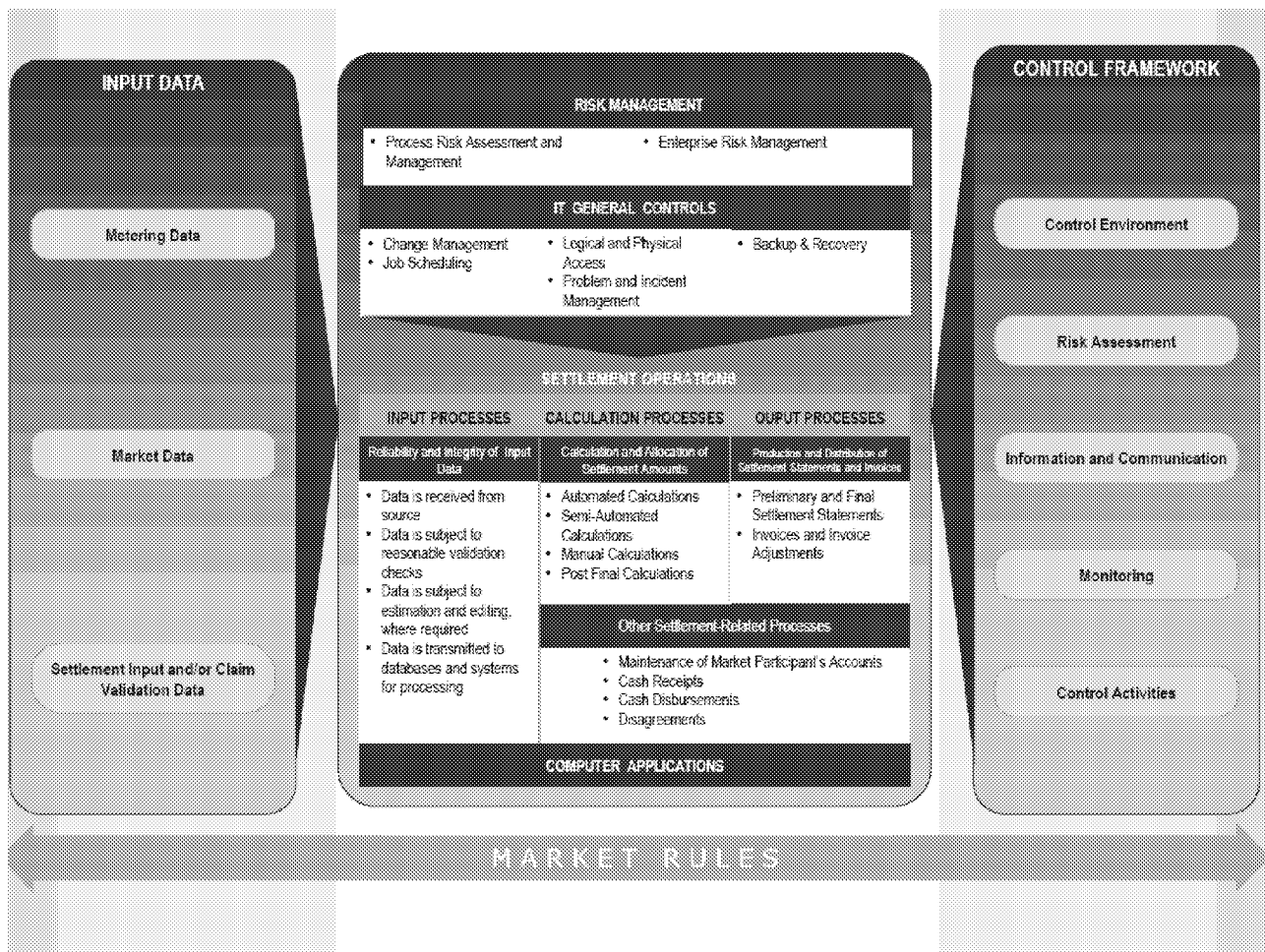
- The audit reports shall be prepared by the auditors in respect of each audit conducted pursuant to this Section 6.17 and shall be commissioned on the basis that the audit report must be provided to the IESO within one month after completion of the audit activities (Market Rules, Section 6.17.5); and
- Each audit report prepared pursuant to this Section 6.17 shall be made available to a market participant upon request, subject to such measures as may be required to be taken to safeguard any confidential information contained in such audit report (Market Rules, Section 6.17.6).

The audits should follow the Canadian Standard on Assurance Engagements 3416 (CSAE 3416) to produce the SOC 1, type 2 reports and the American Institute of Certified Public Accountant (AICPA) Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy or equivalent Canadian standard to produce the SOC 2, type 2 reports.

The initial audit will cover the 9 month period from January to September 2019. The preparatory work is expected to commence on the first audit in September 2018 with the final reports being completed in November 2019. The next audits would occur on a 2 year cycle thereafter.

For greater clarity, it is expected that the planning, fieldwork and reporting for the SOC 1 and SOC 2 will be done as one audit to achieve efficiencies and minimize staff efforts.

The diagram below provides a conceptual overview of the IESO's Market Settlement function. The diagram is an "input/ processing/output" model.



2.2 Requirements/Tasks

The Preferred Proponent is expected to deliver on the following tasks.

2.2.1 Task 1 – Project Management

- Regular check-ins with Director, Internal Audit and Senior Auditor responsible for this project.
- Work with IESO staff to ensure timelines and deliverables are met.

2.2.2 Task 2 – Preparatory work

- Provide a list of information required from the IESO prior to the conduct of field work.
- Provide feedback on the IESO control framework, control objectives and control descriptions for both SOC 1 and 2 prior to the conduct of field work.
- Presentation to the Audit Committee prior to the start of the review.

2.2.3 Task 3 – Perform an in-depth review of the Market settlement processes

- A risk and control matrix for SOC 1 and 2 identifying the assertions, risks and controls evaluated, including attributes of controls relevant for determining the nature and extent of testing and test procedures performed for each control evaluated.

2.2.4 Task 4 - Produce two final reports: SOC 1 type 2 and SOC 2 type 2 (focused on security and confidentiality)

- The reports are to include the three IESO administered markets (listed below) and associated programs:
 - Real-time Markets: energy market and operating reserve market;
 - Financial Markets: transmission rights market; and
 - Procurement Markets: contracted ancillary services and reliability must-run contracts.
- Reports should cover a 9 month period January to September.
- Reports to include:
 - Description of the IESO Market Settlement System provided by the IESO to the Proponent;
 - Details of results of control testing with exceptions identified during the conduct of the audits; and
 - All requirements of Section 6.17 of the Market Rules.

2.2.5 Task 5 - Provide a final presentation to IESO management and the IESO Audit Committee

- In-person presentation of final reports to the Audit Committee of the IESO Board of Directors.

2.3 Out of Scope

The following IESO processes, systems and controls are out of scope of this review:

- Smart Metering Entity and the Meter Data Management/Repository (MDMR) processes, systems and controls;
- Settlement of generation and conservation contracts; and
- Settlement of items that are not part of the IESO-administered markets, for example: settlement of government and regulatory programs: Ontario Rebate for Electricity Consumers, Ontario Electricity Support Program, Rural and Remote Rate Protection, and Fair Hydro Plan.

2.4 Timelines

The contract is for three audits between September 2018 and November 2023. The Deliverables for the first audit must be provided in accordance with the following project schedule, and subsequent audits will follow a similar schedule subject to confirmation at the time.

The following timelines are provided as an estimate only and may be amended or changed by the IESO at any time.

Engagement start	September 2018
Weekly status updates	Provided to Senior Auditor assigned to the project
Monthly status updates	Provided to Director, Internal Audit
Final Report	No later than November 15th in the year of audit

2.5 Material Disclosures

The following knowledge and experience will be required in order to fulfil the Tasks as outlined above:

- Expert knowledge of applicable standards, including Canadian Standard on Assurance Engagements 3416;
- Expert knowledge of Ontario's electricity markets
- Previous experience in conducting SOC 1 and SOC 2 type audits.

Proponents should note that the IESO may wish to provide information on a confidential basis to the Proponent. The IESO will require the Proponent to sign and return a non-disclosure agreement to the IESO as a condition of receiving confidential information associated with the services required.

[END OF SECTION 2]

SECTION 3 PROPOSAL CONTENT AND RATED CRITERIA

3.1 Rated Criteria

The following content should be submitted with your Proposal and should conform to the following section headings and requirements. Failure to conform may impair the Proposal review process, possibly to the detriment of the Proponent.

Rated Criteria Category	Weighting (Points)
Stage II of Evaluation:	
Experience, Skills & Qualifications	40
Understanding of Deliverables	15
Project Plan	10
Total Points [for Stage II of Evaluation]:	65 points
Stage IV of Evaluation: Pricing	35 Points
Total Overall Points:	100 Points

3.1.1 Experience, Skills and Qualifications (40) Points

Each Proponent should provide the following in its proposal:

- (a) A brief description of the proponent, including any subcontractors it intends to use, including demonstration of the Proponent's expert knowledge of applicable standards, including Canadian Standard on Assurance Engagements 3416, American Institute of Certified Public Accountant (AICPA) Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality or Privacy, and Ontario's electricity markets; (5 points)
- (b) The roles and responsibilities of the Proponent and any of its agents, employees and subcontractors who will be involved in providing the Deliverables, together with the identity of those who will be performing those roles and their relevant respective expertise, including backup for key roles; (15 Points)
- (c) A description of SOC 1 and 2 audits that the Proponent has previously and/or is currently delivering to companies and other organizations of a similar size and industry **outside of the IESO**; (15 Points)
- (d) A Reference Form in accordance with the instructions set out in Appendix B – Reference Form. (5 Points)

3.1.2 Understanding of Deliverables (15 Points)

Each Proponent should provide the following in its proposal:

- A description of the Proponent's understanding of the IESO-administered markets and the settlement processes; (5 Points)
- Details which indicate an understanding of the scope, size and complexity of the market settlement processes. (10 Points)

3.1.3 Project Plan

(10 Points)

Each Proponent should provide the following in its proposal:

- A description of how the Proponent will provide the required Deliverables; (5 Points)
- The proposed schedule for delivery of the Deliverables (Gantt chart), management of the work, delegation of responsibility (tasks and assigned persons), work plans, cost control, reporting and quality control and subcontracting arrangements. (5 Points)

3.1.4 Evaluation of Pricing

Proponents should review and complete the Pricing Forms as outlined in Appendix D.

The IESO will not pay or reimburse any hospitality, incidental or food expenses; such items should not be included in pricing submissions. The IESO will not be responsible for any travel or accommodation expenses incurred by the Service Provider that are not pre-approved in writing by the IESO and charged in accordance with *Management Board of Cabinet's Travel, Meal and Hospitality Expenses Directive*, as may be amended or replaced from time to time

Total Points

(35) Points

Each Proponent will receive a percentage of the total possible points allocated to price, as calculated by the following formula:

lowest Proposal price/Proponent Proposal price = %

For example, if the lowest price from a Proponent is \$120, it receives 100% of the price points ($120/120 = 100\%$); a Proponent whose price is \$150.00 receives 80% of the possible price points ($120/150 = 80\%$) and a Proponent whose price is \$240.00 receives 50% of the possible price points ($120/240 = 50\%$).

[END OF APPENDIX C]

Appendix D – Pricing Form

Proponents are requested to complete the Pricing Form using the structure provided below. All prices should be inclusive of all labour, equipment, local travel, and other applicable costs and incidentals. All prices must be reflected in Canadian dollars and are exclusive of applicable taxes.

“Cost for Audit” pricing must include all costs to deliver on the deliverables for the applicable audit (i.e. one audit which will result in two reports). “Total Cost for the Project” must represent the total cost to conduct all 3 audits (i.e. 3 audits resulting in six reports) as per Section 2 – Deliverables of Appendix C.

PART A – AUDIT #1

Resource Name and Title	Role and Responsibility on the Project	Total hours allocated to the Project	Hourly Rate
			\$
			\$
			\$
COST FOR AUDIT #1			\$

PART B – AUDIT #2

Resource Name and Title	Role and Responsibility on the Project	Total hours allocated to the Project	Hourly Rate
			\$
			\$
			\$
COST FOR AUDIT #2			\$

PART C – AUDIT #3

Resource Name and Title	Role and Responsibility on the Project	Total hours allocated to the Project	Hourly Rate
			\$
			\$
			\$
COST FOR AUDIT #3			\$

PART D – TOTAL

TOTAL COST FOR THE PROJECT			\$
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[END OF APPENDIX D]

Appendix E – Standard Terms & Conditions of Agreement

The following represents the IESO's Standard Terms and Conditions of Agreement. If a Proponent is unwilling to sign the Agreement in the form below, it should include details of any proposed changes in a marked-up version to be submitted as part of the Proposal. Proponents whose Proposals do not contain any such mark-up of the Agreement will be deemed to have accepted the form of Agreement in this Appendix E.



SERVICES CONTRACT (CONSULTING)

Part 1. This contract is made between the INDEPENDENT ELECTRICITY SYSTEM OPERATOR (the “IESO”) and [Insert Legal Name – CAPS] (the “Consultant”).

IN CONSIDERATION of the covenants of the parties to this contract (the “Contract”), the parties covenant and agree with each other as follows:

- 1. Retainer, Non-Exclusivity:** The IESO hereby retains the Consultant, as an independent contractor, for the purpose of performing the services described in Schedule A (collectively, including the provision of all deliverables, the “Services”) during the term specified in Schedule A (the “Term”) and the Consultant hereby accepts the retainer. This Contract is not an exclusive contract for the provision of services of the type that make up the Services or any part of them. The IESO reserves the right to procure services, including those substantially the same as or even identical to the Services, outside of this Contract at any time and by any means, including issuing a public request for proposals or otherwise.
- 2. Performance and Warranties:** The Consultant will diligently perform and complete the Services in accordance with this Contract, “Industry Standards”, and applicable laws (as specified in section 9). Consultant’s personnel shall have the knowledge, abilities, experience and qualifications required to perform the Services and will perform the Services in a professional manner. For certainty, “Industry Standards” includes, but is not limited to: (i) the provision of any and all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of this Contract or customarily provided for services of the type specified in this Contract in similar situations, and (ii) adherence to commonly accepted norms of ethical business practices. Regarding any supplies, equipment or other goods provided in connection with the Services, the Consultant shall provide the warranties detailed in Schedule A; or, if none are detailed, then the Consultant shall at a minimum ensure that IESO shall have the full benefit of the original manufacturer’s or other applicable warranties. The Consultant will obtain information and direction from the IESO on a regular basis in the performance of the Services (through individuals formally designated by it), provided that no information or direction provided by the IESO will relieve the Consultant from its responsibility for proper performance of the Services. The Consultant

acknowledges and agrees that any failure by it to perform the Services as defined in this Contract, may have a material adverse effect on the business and operations of the IESO.

3. **Time of the Essence, Additional Effort:** To the extent that time for performance of part or all of the Services is agreed between the parties, unless expressly stated otherwise, time shall be of the essence of such performance and the Consultant will complete the work in accordance with the schedule set forth in the Contract. If required to do so by the IESO, the Consultant will increase the level of effort and resources necessary to ensure the schedule is maintained. If the Consultant agrees to provide the Services for a fixed or maximum price, any such fixed or maximum price will not be exceeded without IESO's prior written authorization, notwithstanding any extra efforts or resources required to maintain schedule.
4. **Inspection and Re-Performance:** The IESO's authorized representative will have the right to inspect the Services at all times and may reject any part thereof which is found not to be in accordance with requirements specified in this Contract or otherwise required by law. In addition to any other remedies the IESO may have under this Contract or that are otherwise available to it at law or equity, the IESO may require that any of the Services so rejected be promptly redone by the Consultant at no additional cost to the IESO. This will include all drawings and data prepared by the Consultant under the Contract which are found, within a period of one year from date of transmittal to the IESO, to be incomplete or inaccurate due to a failure to comply with requirements specified in this Contract or otherwise required by law.
5. **Fees:** As payment for the Services, the IESO will pay to the Consultant the "Fees" as set out in Schedule A. For certainty, "Fees" will not exceed the maximum price to be charged by the Consultant for the Services, and will be inclusive of all labour, materials, overhead, insurance, eligible expenses, and applicable duties and taxes, but exclusive of harmonized sales tax ("HST").
6. **Payment Terms:** The Consultant will render invoices for the Fees to the IESO monthly in arrears, unless otherwise specified in Schedule A, and the IESO will pay to the Consultant the Fees or such portion thereof as is properly due, together with HST (if applicable). Invoices will contain such information and details as the IESO may reasonably require. Payment terms are net 30 days from receipt of invoice by the IESO; provided that the IESO may withhold payment of any portion of the invoice which is in dispute and the IESO and the Consultant will act reasonably to resolve such dispute in a timely manner. If Consultant is a non-resident of Canada, amounts agreed to be paid or credited to the Consultant shall be subject to withholding and remittance to Canada Revenue Agency of such amounts as are required by law (see Part 8 of Schedule A for details, if applicable).
7. **Consultant to Provide, Staffing:** The Consultant will provide all personnel, labour, materials, supplies, equipment, tools, transportation and other requirements for the timely and proper performance of the Services, except as otherwise expressly set forth in this Contract. The Consultant may not remove or add to its personnel without IESO's prior approval, except that Consultant may remove personnel who are terminated by it or who, as a result of illness, threaten the timely performance of the Services, in which case replacement personnel proposed by Consultant, if any, must be approved in advance by IESO. IESO may, in its sole and absolute discretion, require at any time that one or more dedicated personnel be changed and the Consultant will accommodate such requests, but, if it is unable to do so in a timely manner, or if Consultant is unable to offer suitable replacements for ill or terminated personnel in a timely manner, IESO may terminate this Contract in accordance with section 21(a)(i). In any case where replacement personnel are proposed, the Consultant will only propose replacement personnel with the levels of experience and expertise required to perform the Services, and Consultant shall submit the name and detailed qualifications of the proposed replacement to the IESO.

- 8. Security Checks and Training:** The Consultant shall provide such documentation as may be required by the IESO so that the IESO may arrange for criminal record searches, Canadian Security Intelligence Service searches, and such other searches as the IESO, in its sole and absolute discretion, deems appropriate to be conducted in respect of all of the Consultant's personnel prior to commencing the provision of the Services. The Consultant shall make its personnel confirm their commitment to abide by the security and confidentiality obligations of the IESO as set out under the Contract and as may otherwise be specified by the IESO from time to time. As a condition for the benefit of the IESO, the Contract shall not be binding upon the IESO unless and until all of the Consultant's personnel assigned to the provision of Services shall have, in the sole and absolute discretion of the IESO, passed the required security checks. In addition, all the Consultant's personnel shall successfully complete any applicable IESO information security awareness training delivered by the IESO's security team prior to the required engagement start date.
- 9. Applicable Laws, etc.:** The Consultant will comply with all policies, rules and guidelines of the IESO, as specified and provided by the IESO, and all applicable statutes, laws, and regulations relating to the performance of the Services, including:
- (a) any applicable worker's compensation or employment standards laws, including the *Employment Standards Act, 2000*, the *Human Rights Code*, the *Pay Equity Act*, the *Labour Relations Act, 1995*, the *Workplace Safety and Insurance Act, 1997*, and the *Immigration and Refugee Protection Act*, in each case as amended;
 - (b) as applicable, all obligations of the "employer", as defined by the *Occupational Health and Safety Act*, as amended, pursuant to which, the Consultant will provide to the IESO: (i) the Consultant's occupational health and safety policy and its program to implement that policy, within 10 business days of execution of this Contract, and (ii) the site specific safety plan, prior to the performance of any on-site work;
 - (c) all applicable legal requirements relating to the protection of Personal Information (as defined in section 11(a) below), including the *Freedom of Information and Protection of Privacy Act* (Ontario) ("**FIPPA**") and the provisions of any other legislation (each as amended or enacted from time to time) and any guidelines or directives issued by any governmental authority having jurisdiction that apply to personal information and the collection, use, retention and disclosure thereof;
 - (d) in addition to other IESO policies, rules and guidelines as may be provided by the IESO, the following IESO policies, rules and guidelines shall apply in all instances: Code of Conduct; and rules pertaining to workplace violence, harassment and discrimination, copies of each of which IESO has provided to the Consultant. The Consultant acknowledges all IESO workplaces have been designated as fragrance-free, and the Consultant will ensure that its personnel are made aware of this policy; and
 - (e) the *Accessibility for Ontarians with Disabilities Act, 2005* ("**AODA**"), concerning which, (i) the Consultant confirms it is in compliance with AODA and that all of its personnel involved in the provision of the Services have received training under AODA's accessibility standards for customer service regulation, or (ii) if the Consultant is not subject to AODA, it agrees that its personnel shall undergo training relating to AODA, which training shall be provided by IESO.

Consultant's personnel that are in violation of one or more of the foregoing may be denied access to the IESO workplace or directed to leave it immediately, and no extension of time or other allowance shall be granted relative to the schedule for performance of the Services as a result of such denial of access or direction to leave.

10. Confidential Information:

- (a) The Consultant will treat as confidential all information

- (i) of the IESO disclosed to the Consultant by the IESO or any third party, or
- (ii) which otherwise comes into the knowledge, possession or control of the Consultant under, or during the performance of, this Contract and that is confidential by its nature or by virtue of the circumstances in which it is received,

in each case regardless of whether such information is identified as confidential or not, which will include information generated in connection with the provision of the Services, the information of third parties, and all Personal Information as defined in section 11(a), in all cases whether recorded or not, and however fixed, stored, or expressed (the “**Confidential Information**”). For further certainty, Confidential Information shall include and incorporate by reference all confidential or otherwise protected information (collectively “**Prior Confidential Information**”) as stipulated under any prior non-disclosure undertaking or agreement in any form, written or otherwise, that Consultant shall have provided to, or entered into with, the IESO in relation to the process by which the Consultant was selected to enter into this Contract (each a “**Prior Obligation of Confidentiality**”), such as a request for proposal process or other procurement process used by the IESO from time to time. In addition, unless otherwise expressly provided under this Contract, as of the Effective Date, the Consultant’s obligations regarding all Prior Confidential Information shall be governed solely by the relevant terms of this Contract and all Prior Obligations of Confidentiality shall terminate.

- (b) Confidential Information will not include: (i) information that is generally known to the public, other than as a result of an act or omission of the Consultant, (ii) information that the Consultant already possesses without an obligation of confidentiality to the IESO and without any third party’s obligation of confidentiality to the IESO having been breached; or (iii) information that is required by law or court order, or applicable professional standards, to be disclosed, but only to the extent of such required disclosure, and provided that Consultant shall immediately give written notice to the IESO of any request from anyone (including any regulatory, professional standards, or governmental authority) for, or any proceeding of any kind requiring or which may require, the release of any Confidential Information (including that of a third party); and further provided that Consultant shall, if requested, reasonably assist the IESO in any efforts it may make to prevent, or limit the scope or extent of, the requested or required disclosure.
- (c) The Consultant will keep all Confidential Information confidential and will not, without the IESO’s prior written consent, use the Confidential Information for any purpose other than delivering the Services. The Consultant will provide or return the Confidential Information to the IESO on demand with no copy or portion kept by the Consultant in any form or on any media. Consultant shall, in advance, identify any portion of the Confidential Information that may become incorporated into its computer storage, back-up or related systems or that of its subcontractors, and shall: (i) notify the IESO in advance of receiving or generating any such Confidential Information, and (ii) agree with the IESO on a detailed plan for maintaining the confidentiality of such information at all times, the on-going implementation of which plan shall be deemed to be part of, and included in the price of, the Services. If the Consultant fails to so notify the IESO in advance, the Consultant shall, at its own expense, comply with such directions as the IESO may, in its reasonable discretion, issue to the Consultant for the purposes of ensuring the on-going confidentiality of the Confidential Information, up to and including a direction to remove all digital representations of Confidential Information in any form from all electronic storage media in its possession or under its control.
- (d) The Consultant will limit the disclosure of Confidential Information to only those of its personnel and subcontractors who: (i) have a need to know it; (ii) have agreed to protect it from unauthorized use or disclosure; and (iii) have been specifically authorized by the IESO to have such disclosure as required to perform the Services. The Consultant shall cause its employees and permitted

subcontractors to comply with his, her or its obligations to the extent that such obligations relate to the protection of any Confidential Information. The Consultant will notify the IESO promptly in writing of any loss or inability to account for the Confidential Information. The Consultant will protect the confidentiality of all Confidential Information using means, methods, controls and processes at least as secure and effective as those used by the Consultant to secure its own highly confidential information, but in any event, using at least reasonable means, methods, controls and processes.

- (e) The Consultant acknowledges and agrees that *FIPPA*, as amended from time to time, applies to and governs all IESO records, and may require the disclosure of such records to third parties. The Consultant shall cooperate with the IESO in responding to any request for access to IESO records, including Personal Information.
- (f) The Consultant shall identify expressly and in writing all information that it considers to be the Consultant's confidential information. Notwithstanding any such identification, the Consultant agrees that IESO may disclose to one or more unions that represent certain IESO employees all such information as may be required to be disclosed under the terms of any applicable collective agreement, provided that, if such disclosures include the confidential information of the Consultant, such union(s) shall be made aware of the confidentiality of any information so disclosed.
- (g) The provisions of this section 10 governing Confidential Information will continue to apply after the termination of this Contract, without limit in time.
- (h) If a conflict or inconsistency arises between the provisions of this section 10 and section 11 – Personal Information and Privacy, the provisions of section 11 will govern.
- (i) In addition to any other rights and remedies to which the IESO may be entitled, the IESO shall be entitled to injunctive and other appropriate equitable relief to prevent breaches of, and to specifically enforce, the provisions of sections 10 and 11.

11. Personal Information and Privacy

(a) **Definitions:** For the purposes of this section 11: i) "**Applicable Legal Requirements**" means the legal requirements specified in section 9(c); ii) "**Breach**" means an unauthorized collection, use, disclosure, alteration or other compromise of Personal Information; iii) "**Personal Information**" means information about an identifiable individual that is provided to or obtained by the Consultant in connection with, or during the performance of, this Contract; and iv) "**processing**" means any (i) collection, use, disclosure or destruction of, or (ii) operation or set of operations which is performed upon or in connection with, data or information, by any means, and grammatical variants such as "process" and "processed" shall have a corresponding meaning.

(b) Protection of Personal Information

- (i) The Consultant acknowledges that, in performing the Services, it may be processing Personal Information on behalf of the IESO and this section 11 shall apply to the extent that it does. The Consultant acknowledges that it holds all Personal Information on behalf of the IESO, that such Personal Information remains under the control of the IESO and that the Consultant shall not acquire any right, title or interest in or to any Personal Information.
- (ii) The Consultant acknowledges that the IESO is an institution under *FIPPA* and that all Personal Information processed by the Consultant on behalf of the IESO is subject to the provisions of *FIPPA* relating to the protection of personal information.
- (iii) The Consultant shall protect all Personal Information processed by it with physical, organizational and technological safeguards that are appropriate to the nature, quantity and sensitivity of such

information, applying security standards and procedures at least equivalent to those used by it to protect its own confidential information and the personal information of the Consultant's personnel and other individuals whose information it collects or holds, and in conformity with any specific security instructions provided to it by the IESO. The Consultant shall limit access to all Personal Information to the Consultant's personnel who have a need for such access in order to perform the Services.

- (iv) The Consultant shall process Personal Information only for the purposes of performing the Services and in accordance with instructions received from the IESO. The Consultant shall promptly refer all requests by third parties for access to any Personal Information in its possession or custody to the IESO.
- (v) The Consultant shall not disclose any Personal Information to third parties other than persons who have a need to know to enable the Consultant to perform the Services, except with the prior consent of the IESO or as may be required by law.
- (vi) The IESO and/or its authorized representatives shall have the right to enter upon any premises of the Consultant or any locations where the Consultant processes Personal Information at any time during normal business hours and from time to time, upon at least twenty-four (24) hours prior notice, for the purposes of inspecting and auditing the Consultant's adherence to the provisions of this Contract.
- (vii) Both during the term of this Contract and after any termination or expiry thereof, the Consultant shall: 1) retain all records containing Personal Information for such period of time as is necessary to satisfy the requirements of all applicable laws and professional standards, or for such longer period of time (if any) as may be specified by the IESO; and 2) promptly upon each request therefor, make available to the IESO any and all records containing any Personal Information so requested by the IESO. The foregoing provisions of this paragraph shall survive any termination or expiry of this Contract.
- (viii) In the course of performing the Services, the Consultant shall at all times conduct itself in a manner that does not cause the IESO to be in contravention of Applicable Legal Requirements. The Consultant shall be responsible for compliance by all Consultant's subcontractors and personnel with the provisions of this section 11 and with all Applicable Legal Requirements.
- (ix) The Consultant shall notify the IESO forthwith upon its becoming aware of any Breach and shall provide to the IESO full information respecting such Breach sufficient to enable it to comply with its obligations under Applicable Legal Requirements.
- (x) The Consultant shall notify the IESO forthwith of any demand, order or other requirement of a governmental authority to disclose or provide access to any Personal Information and shall take all reasonable steps requested by the IESO to respond to such demand, order or requirement, including assisting the IESO in opposing disclosure or access through court proceedings.

12. Intellectual Property: The intellectual property of the IESO and the Consultant will be governed by the provisions in Schedule C.

13. Conflict of Interest:

- (a) A “**Conflict of Interest**” will include, but is not limited to, any situation or circumstances where, in relation to the performance of its obligations under this Contract, the Consultant’s other commitments, relationships or financial interests: (i) could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment, or (ii) could, or could be seen to, compromise, impair or be incompatible with the effective performance of its contractual obligations.

- (b) The Consultant will: (i) avoid any Conflict of Interest in the performance of its contractual obligations, (ii) disclose to IESO without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations, and (iii) comply with any requirements prescribed by IESO to resolve any Conflict of Interest.
- (c) In addition to all other contractual rights or rights available at law or equity, the IESO may immediately terminate this Contract upon giving notice to the Consultant where: (i) the Consultant fails to disclose an actual or potential Conflict of Interest, (ii) the Consultant fails to comply with any requirements prescribed by the IESO to resolve a Conflict of Interest, or (iii) the Consultant's Conflict of Interest cannot be resolved.
- 14. Payments, Gifts and Hospitality:** To preserve the image and integrity of the IESO and its employees, agents and subcontractors, the Consultant and its employees, agents and subcontractors shall not:
- (a) make any offer of a loan, cash, gift certificate, discount or service, or
- (b) offer any business gifts or hospitality,
- to any employee, agent or subcontractor of IESO, except to the extent these are permitted to be received by an employee, agent or subcontractor of IESO in accordance with IESO's Code of Conduct.
- 15. Insurance:** During the Term, the Consultant will maintain the minimum insurance coverage specified in Schedule B and will provide satisfactory certificates of insurance confirming such coverage on request by the IESO.
- 16. Audit and Records Retention:** The Consultant will maintain, at its cost, complete and accurate records of the Services performed for the IESO and all Fees, or other amounts, charged to the IESO, for a period of seven years after the expiry or early termination of the Term. During the Term and for seven years thereafter, the IESO and any person designated by the IESO, will have access to the Consultant's records and documentation relating to the Services, at all reasonable times and on reasonable notice, for the purpose of auditing and verifying the performance of, and Fees charged for, the Services.
- 17. Exclusion of Certain Liabilities and Cap on IESO Liability:** Notwithstanding anything to the contrary expressed or implied in this Contract, the IESO will not be liable to the Consultant for: (i) any general, indirect or consequential damages, including for lost profits or economic loss of any kind, regardless of whether the liability to which such damages relate arises in contract, tort, or otherwise in law or equity; or for (ii) any bodily or personal injury (up to and including death), property damage or loss of any other kind sustained by the Consultant, its employees, agents or subcontractors arising from any cause whatsoever. In addition, under no circumstances whatsoever will IESO's total cumulative liability to Consultant in connection with this Contract exceed the amount agreed to be paid by IESO to Consultant for the Services provided under this Contract.
- 18. Indemnity:** The Consultant will hold harmless and indemnify the IESO (including members of its board of directors, officers, employees and agents), from and against all costs, losses, damages, actions and liabilities incurred by the IESO arising directly or indirectly in connection with, or as a result of any breach, default, negligent act or omission, or wilful misconduct by the Consultant, its employees, subcontractors or agents (the "**Consultant Group**") in the performance, purported performance or non-performance of the Consultant's obligations under this Contract, or as a result of any misrepresentation made by any of the Consultant Group in connection with this Contract, and, without limiting the foregoing, including all legal fees, costs, disbursements and expenses of every kind on a full indemnity basis, as they become due.

19. Assignment: The IESO may assign this Contract, or any part of it, upon written notice to the Consultant. The Consultant will not assign, transfer or otherwise dispose of any of its rights, obligations, or interests in this Contract, without the prior written consent of the IESO. The provision of such consent will be in the discretion of the IESO, acting reasonably, and subject to the terms and conditions that may be imposed by the IESO.

20. Subcontracting: The Consultant will not subcontract any of its obligations hereunder, except as expressly permitted under Schedule A. No subcontract will result in the imposition of additional liabilities or obligations on the IESO. Further, the use of any subcontractor by the Consultant will not relieve the Consultant of any obligation or liability under this Contract, and the terms and conditions of any subcontract entered into by the Consultant with a subcontractor for any part of the Services will be consistent in all respects with the applicable terms and conditions of this Contract. For certainty, the Consultant remains the primary point of contact for the IESO in connection with this Contract. If following the commencement of delivery of any of the Services by a subcontractor, the IESO deems, in its sole and absolute discretion, such subcontractor to be unsuitable, the IESO may withdraw its approval of such subcontractor and the Consultant will immediately, upon receipt of the IESO's notice, stop using the subcontractor to provide the Services. If the Consultant proposes a suitable replacement subcontractor that is accepted by the IESO, this shall in any event be at no cost to IESO.

21. Termination:

(a) The IESO may terminate this Contract immediately if any of the following events of default occur:

- (i) any material breach or non-performance by the Consultant of its obligations under this Contract, including failure or inability of the Consultant to devote the necessary time, resources, staff, and skill to the performance of the Services;
- (ii) any breach of the Consultant's obligations pursuant to section 10, Confidential Information; section 11, Personal Information and Privacy; or section 13, Conflict of Interest;
- (iii) the Consultant assigns, subcontracts or, in any manner, transfers or disposes of, or purports to transfer or dispose of, its interest in this Contract or any obligations under it to any third party, without the IESO's prior written consent, as required by sections 19 and 20;
- (iv) the Consultant becomes insolvent, is adjudged bankrupt or takes the benefits of any legislation relating to bankrupt or insolvent debtors;
- (v) the Consultant voluntarily or by court order is wound-up, dissolved or liquidated;
- (vi) any adverse change in circumstance or conduct of the Consultant which may, in the sole and absolute discretion of the IESO, negatively affect or harm the status, operations or reputation of the IESO, including if one or more Consultant personnel should at any time pose a security threat to IESO or otherwise fail or cease to comply with the security requirements of the IESO; and
- (vii) the Consultant fails to comply with applicable laws and regulations relevant to the performance of the Contract.

(b) The IESO reserves the right to terminate this Contract at any time, without cause and in its sole and absolute discretion, upon 30 days' prior written notice to the Consultant.

22. Consequences of Termination: As of the effective date of termination, the rights and obligations of the parties will cease (except to the extent such rights and obligations apply to that portion of the Term occurring prior to the effective date of termination or otherwise survive in accordance with section 26) and the parties will co-operate in the return of records and information, the making of final payments (if any) and related matters (recognizing that Consultant shall be entitled to retain copies of records and information to the extent required to comply with applicable legal requirements, regulatory

requirements, and professional standards). If any amount is finally determined to be owing to Consultant in respect of Services performed prior to termination for any reason under section 21(a), IESO may set-off against such amounts any costs, losses or expenses it suffers in connection with the termination and the events leading thereto. With respect specifically to termination in accordance with section 21(b), the Consultant shall not be entitled to any compensation as a result of such early termination, but shall be entitled to payment for all Services agreed to be and actually performed up to the effective date of termination. In this regard, following receipt of the IESO's written notice, the Consultant (i) shall agree with the IESO as to which Services, if any, will be completed in the period prior to the termination date; and (ii) shall not enter into any additional commitments to third parties in connection with this Contract that would have the effect of adding to the amounts to be paid by the IESO under this Contract. Further, the Consultant shall make its best efforts to terminate any existing third party commitments relating to this Contract as soon as feasible following receipt of the notice, taking into account any closing-out arrangements agreed between the parties.

23. Notice: Any notice to be given by either party hereto to the other pursuant to this Contract will be in writing and delivered by regular mail, courier service, or electronic mail during the IESO's normal business hours to the address specified in Schedule A (or such other address as notified by a party by notice given under this section). Notices will be deemed to have been given: (a) in the case of delivery by postal service, 5 business days after such notice is sent, or (b) in the case of delivery by courier service, or by email (or other electronic mail service), 1 business day after such notice is sent.

24. Inconsistency: If there is any inconsistency between the provisions of the body of this Contract and any schedule to this Contract, the body of this Contract will prevail, unless the schedule expressly refers to the section of the body of the Contract over which it prevails.

25. Miscellaneous:

(a) **Entire Agreement, Amendment.** This Contract constitutes the entire understanding between the parties relating to the Services. There are no contracts, representations or warranties except as set forth in this Contract. No modification or amendment to this Contract will be binding unless executed in writing by the authorized representatives of the parties.

(b) **Non-Waiver.** No waiver of any provision of this Contract shall: i) be binding unless executed in writing and properly authorized by the party to be bound thereby; or ii) constitute a waiver of any other provision of this Contract or constitute a continuing waiver, unless otherwise expressly provided.

(c) **Benefit of Contract.** The terms of this Contract will enure to the benefit of and be binding upon the successors and assigns of each of the parties.

(d) **Interpretation.** In any provision of this Contract containing words denoting inclusion (e.g. "including") followed by a list of specific matters or items, such lists will not restrict the generality of such provision. Where the IESO has "sole and absolute discretion" in respect of any matter referred to in this Contract, such discretion may be exercised by IESO in a subjective manner.

(e) **Governing Law and Forum.** This Contract will be governed by the laws in effect in the Province of Ontario and the applicable federal laws of Canada. The parties irrevocably and unconditionally submit to the jurisdiction of the courts of Ontario and all courts competent to hear appeals from them. The jurisdiction of any proceeding commenced by the Consultant will vest solely and exclusively in Ontario, and the Consultant will not file a proceeding in any other jurisdiction.

(f) **IESO Marks.** The Consultant will not use, nor will it permit any person employed by it to use, identifying marks of the IESO other than with the prior written consent of the IESO, which may be arbitrarily withheld.

- (g) **Relationship of the Parties.** Nothing in this Contract will make the relationship between the IESO and the Consultant one of partnership, joint venture or employment. The Consultant is an independent contractor. Nothing in this Contract constitutes authority for the Consultant to make commitments which bind the IESO or otherwise act on behalf of the IESO.
- (h) **Currency.** Unless otherwise specified in Schedule A all references to dollar amounts are Canadian dollars.
- (i) **Severability.** If any provisions of the Contract are for any reason held illegal or unenforceable, such provisions will be deemed separable from the remaining provisions of the Contract and will in no way affect or impair the validity or the enforceability of the remaining provisions of the Contract.
- (j) **Further Assurances.** Each party will, at the written request of the other party, do all further things as reasonably required to more effectively implement this Contract.

26. Survival: Terms, provisions, covenants and conditions contained in this Contract, including its schedules, which, by their nature or the terms thereof, require their performance by the parties after the expiration or termination of this Contract will continue in full force and effect following such expiry or termination, including sections 4, 10, 11, 12, 16, 17, 18, 22, 23 and 25.

27. Counterparts: This Contract may be executed in any number of counterparts, each of which will be deemed an original, and all of which taken together will be deemed to constitute one and the same instrument. Delivery of an executed signature page to this Contract by any party by electronic transmission or facsimile will be as effective as delivery of a manually executed copy of the Contract.

28. Effective Date: This Contract will become effective when all the parties have signed it. The date this Contract is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Contract (the "**Effective Date**").

Each party is signing this Contract on the date stated beneath that party's signature.

**INDEPENDENT ELECTRICITY SYSTEM
OPERATOR**

[INSERT NAME OF COUNTERPARTY]

Signature of Authorized Representative

Signature of Authorized Representative

Printed Name

Printed Name

Title

Title

Date

Date

SCHEDULE A
DESCRIPTION OF TERM, SERVICES AND FEES

Term:

- 1.1 Subject to section 1.2 of this Schedule A, the Term of this Contract commences on the Effective Date and ends on **[INSERT END DATE]** (the “**Expiry Date**”).
- 1.2 The Term of this Contract may be extended at the sole and absolute discretion of the IESO, upon prior written notice to the Consultant, for [] additional [] terms. For certainty, the Term will not extend beyond **[INSERT DATE]**.

Services:

- 2.1 **[Insert details of the Services and deliverables to be provided by the Consultant.]**
- 2.2 As used throughout this Contract, the term “**deliverables**” shall be construed broadly, and shall include all deliverables that are expressly stipulated in this Schedule A, as well as those that it is implicitly appropriate or necessary for the Consultant to provide in connection with the provision of the Services under this Contract, taking into account the IESO’s intent in procuring the Services.

Permitted Subcontractors:

- 3.1 The Consultant is permitted to use the following subcontractors, but in each case only in connection with the identified scope: **[List permitted subcontractors and associated scopes]**

IESO-Owned Equipment:

- 4.1 Equipment authorized by IESO for purchase by the Consultant or supplied to the Consultant by IESO, will be used solely in the performance of the Services unless prior written approval is obtained from IESO. Title to such equipment will remain with IESO. When in the Consultant’s possession, it will ensure the equipment will be clearly identified as property of IESO. The Consultant will be responsible for safeguarding such equipment while in its custody and control, maintaining a system of inventory control acceptable to IESO, acting reasonably. IESO will have reasonable access to the premises of the Consultant for the purpose of verifying records and auditing inventories of such equipment.
- 4.2 Following completion of the Services or termination of the Contract, the Consultant will, unless otherwise directed by IESO, make all such equipment immediately available for pick up by IESO. The Consultant will be liable for the repair or replacement of all IESO-owned equipment which becomes damaged or lost while in the custody or control of the Consultant.

Fees: Insert the appropriate Fee structure

- 5.1 The IESO will pay the Consultant the following hourly rate for work performed by its personnel:

Name	Position	Hourly rate (CDN \$)

For any period worked of less than one hour, the hourly rate will be prorated accordingly, where a partial hour will be rounded to the nearest quarter of an hour.

All expenses will be borne by the Consultant.

In no event will the total Fees payable by the IESO to the Consultant under this Contract, exceed **[Insert total price from Proponent's Proposal]**, excluding HST, as applicable.

Invoices:

- 6.1 The Consultant will submit invoices to the IESO in accordance with the payment terms stipulated in section 6 of the Contract. Invoices will include the Consultant's HST Registration Number if HST is applicable and it will be indicated as a separate line item.
- 6.2 All invoices will indicate a purchase order number which will be provided when the Contract is authorized and issued by the IESO.
- 6.3 Invoices must be delivered via email addressed as follows:
Attention: Accounts Payable
Email: Accounts.payable@ieso.on.ca
(Indicate the purchase order number in the subject or reference line)

Address for Notices:

- 7.1 For the purpose of section 23 of the Contract, the address for notice of each of the parties is as follows:

If to the IESO:

Independent Electricity System Operator
120 Adelaide Street West
Suite 1600
Toronto, Ontario M5H 1T1
Attention: [Insert Name and/or Title of IESO contact]
Email: [Insert]

If to the Consultant:

[Name]
[Address]
[Address 2]
[City, Province, Postal Code, or equivalent for U.S.A.]
Attention: [Insert Name and/or Title of Consultant contact]
Email: [Insert]

Tax Representation: [NTD: Select one that applies and delete the other]

- 8.1 The Consultant represents and warrants that the Services contracted for are directly related to the business of the Consultant and that the Consultant is a resident of Canada. The Consultant acknowledges that the foregoing declaration has no binding effect on Canada Revenue Agency but will be relied on by the IESO in determining its obligations under the *Income Tax Act* (Canada) and its regulations thereunder.

[OR]

- 8.1 The Consultant represents and warrants that the Services contracted for are directly related to the business of the Consultant and that the Consultant is a non-resident of Canada. In accordance with the provisions of the *Income Tax Act* (Canada), the IESO will withhold and submit 15% of the Fees charged on each invoice for Services performed in Canada unless the Consultant obtains from Canada Revenue Agency a waiver or reduction in the amount to be withheld.

SCHEDULE B INSURANCE REQUIREMENTS

- 1.1 **Maintain Insurance.** The Consultant will obtain and maintain insurance at its own expense, and keep in full force and effect:
- (a) commercial general liability insurance on an occurrence basis having a minimum inclusive coverage limit, including personal injury and property damage, of not less than **two million dollars (\$2,000,000.00)]** per occurrence, which shall be extended to cover contractual liability, products and completed operations liability, owners/contractors protective liability and must also contain a cross liability clause, a severability of interest clause and a waiver of subrogation clause, and must name the IESO as an additional insured; and
 - (b) automobile liability insurance on all owned and non-owned vehicles used in connection with the Contract and such insurance coverage shall have a limit of not less than **one million dollars (\$1,000,000.00)]** per vehicle, in respect of bodily injury (including passenger hazard) and property damage inclusive of any one accident and mandatory accident benefits; and
 - (c) errors and omissions insurance in the amount of **one million dollars (\$1,000,000.00).**
- All insurance coverages and limits required to be maintained by the Consultant shall be primary to any insurance maintained by the IESO, which shall be excess and non-contributory. Prior to the commencement of the delivery of the Services or goods, the Consultant shall deliver to the IESO a certificate of insurance which evidences the Consultant's compliance with this section 1.1.
- 1.2 **Workplace Safety and Insurance Act.** If the Consultant is subject to the *Workplace Safety and Insurance Act ("WSIA")*, it will, upon request of the IESO, submit a valid clearance certificate of *WSIA* coverage to the IESO prior to the commencement date of the Contract. In addition, the Consultant covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it/its subcontractors, from time to time during the Term of the Contract. The Consultant will indemnify and save the IESO harmless in respect of any failure by it to do any or all of the foregoing.
- 1.3 The Consultant will indemnify and save the IESO harmless in respect of any failure by it to do any or all of the foregoing. Under no circumstances will the IESO be liable to the Consultant or any employee thereof for any failure of the Consultant to obtain any insurance necessary or desirable in relation to the subject matter of the Contract.

SCHEDULE C INTELLECTUAL PROPERTY

Part 1. Definitions

- 1.1 **"Intellectual Property Rights"** means:
- (a) any and all proprietary rights anywhere in the world provided under: (a) patent law; (b) copyright law (including moral rights); (c) trade-mark law; (d) design patent or industrial design law; (e) semi-conductor chip or mask work or integrated circuit topography law; or (f) any other statutory provision or common law principle applicable to this Contract, including trade secret law, that may provide a right in either hardware, software, content, documentation, Confidential Information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such hardware, software, content, documentation, Confidential Information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes or know-how;

- (b) any and all applications, registrations, licences, sub-licences, franchises, agreements or any other evidence of a right in any of the foregoing; and
- (c) all licences and waivers and benefits of waivers of the intellectual property rights set out in (a) and (b) above, all future income and proceeds from the intellectual property rights set out in (a) and (b) above, and all rights to damages and profits by reason of the infringement or violation of any of the intellectual property rights set out in (a) and (b) above.

Part 2. IESO Ownership Rights:

- 2.1 IESO and Consultant acknowledge and agree that, as between IESO and Consultant, IESO will be the exclusive owner of:
 - (a) all Confidential Information;
 - (b) all Personal Information;
 - (c) any and all information relating to the IESO, any third party, or any of their respective employees, contractors, agents, customers, partners, joint venturers or end users that:
 - (a) was provided, collected or generated as part of the use or operation of the deliverables or the provision or receipt of the Services (including in relation to any reports provided by, or reporting obligations of, Consultant) or in order to comply with any applicable law; or (b) otherwise became known to either the IESO or the Consultant as a result of any actions under or in respect of this Contract; and
 - (d) any and all works, data, text, information, audio, video, trade-marks, trade names, logos, domain names or other distinguishing features, graphics, advertisements, graphical user interface elements and designs, photography and other works, in any form or medium whatsoever and other information of the IESO and of any third party provided by, or at the request of, or on behalf of the IESO,
 (collectively, the “**IESO Data**”).
- 2.2 IESO will have all ownership rights, including to all Intellectual Property Rights, in the deliverables immediately upon their creation and at every stage of their development regardless of their state of completion (collectively with the IESO Data, the “**IESO Property**”), unless otherwise indicated in Schedule A.
- 2.3 Consultant hereby: (a) assigns and transfers to IESO; (b) agrees to assign and transfer to IESO; and (c) agrees to cause all employees, agents and independent contract personnel of the Consultant or of any subcontractor to assign and transfer to IESO, all ownership rights (including Intellectual Property Rights) throughout the world in and to all IESO Property, to the extent any of the foregoing does not automatically and immediately vest in IESO, and hereby waives any moral rights that it may have in the deliverables and represents that it will obtain a waiver of the moral rights of all authors of the deliverables.
- 2.4 The Consultant will not use any deliverables, or any part or parts thereof, for the benefit of any party other than the IESO without the prior written consent of the IESO. For certainty, the IESO may use the deliverables in any way it sees fit. No right, interest, or title to any deliverable is reserved by the Consultant.
- 2.5 Consultant may use the IESO Property (including the deliverables) only to perform its obligations under this Contract.

Part 3. Consultant Ownership Rights:

- 3.1 IESO and Consultant acknowledge and agree that, as between IESO and Consultant, Consultant will be the exclusive owner of any works, data, text, information, audio, video, trade-marks, trade names, logos, domain names or other distinguishing features, graphics, advertisements, graphical user interface elements and designs, photography and other works, in any form or medium whatsoever and other information of the Consultant created, produced by, or licensed to or for Consultant prior to the Effective Date (collectively, the “**Consultant Property**”).
- 3.2 If any Consultant Property is incorporated into the deliverables (the “**Embedded Consultant Property**”), Consultant will identify such Embedded Consultant Property in Schedule A, and the ownership rights granted to IESO under Part 2 of this Schedule C in respect of the deliverables will not extend to such Embedded Consultant Property, but Consultant hereby grants to the IESO, a perpetual, non-exclusive, royalty-free, fully paid-up licence to use, modify, or reproduce, such Embedded Consultant Property, solely as it relates to use of the applicable deliverable, for any aspect of its business. IESO may sublicense the rights granted in this section 3.2.

Part 4. Consultant Representation, Warranties and Covenants

- 4.1 Consultant represents, warrants and covenants that:
- (a) the performance by the Consultant of its obligations under this Contract and the possession and use of the deliverables and the Services by the IESO or by any third party contemplated in Schedule A as a user of the deliverables or Services do not and will not infringe the rights of any third party; and
 - (b) the deliverables do not and will not incorporate any proprietary, third party, or open-source materials.

Part 5. Intellectual Property Indemnity

- 5.1 In addition to the indemnification provided by the Consultant under section 18 of the Contract, Consultant shall indemnify and hold harmless the IESO from any suit, claim, cost or expense based on a claim that the Services, or any part thereof, infringes any Intellectual Property Rights of a third party, provided the Consultant shall be notified of any such claim within a reasonable period following IESO’s receipt of same. Consultant shall pay all damages, costs and expenses incurred by the IESO resulting from such a claim, including legal fees, costs and disbursements of every kind as well as any settlement costs.

- 5.2 If the use of the Services or any part thereof becomes or is likely to become the subject of a claim for Intellectual Property Rights infringement, without limiting its other obligations under the Contract, Consultant shall, at IESO's option, either (i) procure the right to continue using the infringing portion of the Services at no additional cost to IESO, or (ii) modify such portion of the Services to render it non-infringing, provided that such modified Services shall perform substantially in accordance with the specifications for the infringing Services. If the use of the Services or any part thereof is enjoined by a court of competent jurisdiction, and if none of the remedies referred to in the previous sentence is available to the Consultant on commercially reasonable terms, the Consultant shall replace the infringing Service or deliverable with a Service or deliverable that provides functionality that is substantially the same as the infringing deliverable or Service. If Consultant is unable to replace or modify the infringing deliverable or Service as required under this paragraph, then Consultant will be deemed to have breached the Contract and the IESO, in addition to any other rights, shall have the right to immediately terminate this Contract.

Appendix F – Non-Disclosure Agreement



Non-Disclosure Agreement

PROPOSED PROJECT: IESO Market Settlement Service Organization Control 1 & 2 Audits RFP#163

WHEREAS:

- A. The Independent Electricity System Operator (“IESO”) has issued a Request for Proposals for the above referenced proposed project (the “Proposed Project”).
- B. In relation to the Proposed Project, the IESO may wish to provide information on a confidential basis to potential vendors, including the undersigned company or individual (as applicable, the “Proponent”), for the purpose of reviewing, considering, evaluating, or negotiating the Proposed Project and matters necessarily ancillary thereto (the “Purpose”).
- C. The IESO requires the Proponent to sign and return this non-disclosure agreement to the IESO as a condition of receiving some or all of the procurement documents and information associated with the Proposed Project.

NOW THEREFORE in consideration for being provided with such Confidential Information (as hereinafter defined), the Proponent hereby acknowledges and agrees to the following terms and conditions:

1. Confidential Information. “Confidential Information” means all data and information, in any form or medium and whether communicated orally or in writing, related to the Proposed Project or the procurement process, or to the business, operations or assets of the IESO including, without limitation, any and all corporate, financial, economic, legal, and customer information, proprietary and trade secrets, technology (including information technology), accounting records, and confidential information of third parties, including but not limited to any personal information, that is disclosed to, or accessed by the Proponent.

Confidential Information does not include information which: (a) is already in the public domain or becomes available to the public other than through an act or omission of the Proponent; (b) must be disclosed pursuant to a compulsory order under a judicial process or under a compulsory regulatory requirement; (c) is lawfully acquired without obligation of confidence from a third party; (d) is already known to or in the possession of the Proponent at the time of its disclosure, or is independently developed by the

Proponent without violating the obligations of confidentiality in this agreement; or (e) the IESO has consented in writing to the Proponent's disclosure of such information.

The Proponent claiming any of the foregoing exceptions apply shall have the onus of establishing their applicability.

2. Representatives. “Representatives” means directors, officers, employees, contractors, agents, lawyers, advisors and consultants of a party to this agreement, and includes any Representatives of an affiliate of a party.

3. No Partnership, etc. This agreement does not establish a partnership, agency, joint venture, exclusive dealing arrangement or similar relationship with respect to the Proposed Project or similar undertaking, nor does it obligate the IESO or the Proponent to enter into such a relationship, or any other contract or agreement. Neither party has asserted, or will attempt to assert, the authority to make commitments for or to bind the other party to any obligation.

4. Restricted Use of Confidential Information. Confidential Information shall be used solely for the Purpose. The Proponent shall keep the Confidential Information confidential and shall use at least the same degree of care in safeguarding Confidential Information as it uses for its own information of like importance, but in no event less than a reasonable standard of care. Notwithstanding the foregoing, the Proponent may disclose the Confidential Information to those of its Representatives who require such information for the purposes of the Proposed Project, provided that such Representatives are made aware of and required to comply with the obligations of confidentiality contained in this agreement. The Proponent shall comply with other reasonable security measures regarding the Confidential Information as may be requested in writing by the IESO.

5. Term and Survival. This agreement takes effect on the date it is executed by the Proponent (the “Effective Date”). Notwithstanding the return or destruction of all or any part

of the Confidential Information, the terms of this agreement shall nevertheless remain in full force and effect for a period of seven (7) years from the Effective Date.

6. Return or Destruction of Confidential Information.

All Confidential Information and any reproductions thereof (both written and electronic) which are in possession of the Proponent and its Representatives shall be destroyed or returned to the IESO immediately following the IESO's request.

7. Compelled Disclosure. Where the Proponent is compelled by law to disclose any Confidential Information, it shall provide the IESO with prompt written notice and co-operate in good faith with the IESO in any reasonable, lawful action that the IESO takes to resist or limit such disclosure. If such action(s) is unsuccessful, the Proponent shall use reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to the Confidential Information so disclosed.

8. No Representations or Warranties. The IESO makes no representations or warranties, express or implied, as to the quality, accuracy, completeness or reliability of the Confidential Information disclosed to the Proponent. The IESO and its Representatives shall have no liability whatsoever with respect to the use of or reliance upon the Confidential Information by the Proponent or its Representatives.

9. Title. The IESO retains all title to its Confidential Information and all reproductions thereof. This agreement shall not be construed as granting or conferring any rights to the Proponent by license or otherwise in any Confidential Information (including any patent, patent application, trademark, copyright or trade secret) disclosed under this agreement.

10. Remedies. The Proponent acknowledges that the Confidential Information is valuable and unique, and that any violation or threatened violation of this agreement by the Proponent will cause irreparable injury to the IESO, and that monetary damages would not be a sufficient remedy, thereby entitling the IESO to equitable relief, including injunctive relief and specific performance in addition to all other remedies available at law or equity.

11. Indemnity. The Proponent shall be responsible for any disclosure of Confidential Information by any of the Proponent's Representatives that is not permitted under this agreement and for any failure by any of the Proponent's Representatives to comply fully with the terms of this agreement. The Proponent shall indemnify and hold harmless the IESO from and against all actions, damages, claims, and costs arising out of any breach of this agreement by the Proponent or its Representatives.

12. Miscellaneous. This agreement shall not be amended, assigned, nor shall any obligation be waived, except in writing signed by each party. A waiver on any occasion by the IESO shall not act as a waiver or bar to the enforcement of the rights of the IESO with respect to any other breach, potential breach or the same breach or potential breach on any other occasion. This agreement benefits and binds the parties and their respective successors and permitted assigns. If any part of this agreement is deemed invalid or unenforceable, the balance of this agreement shall remain valid and in full force and effect. This agreement represents the complete agreement between the parties with respect to the subject matter hereof.

13. Execution. This agreement may be signed and delivered in counterparts by mail or email, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

14. Governing Law. This agreement shall be governed by and shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Ontario in any suit, action or proceeding arising out of or in connection with this agreement.

Agreed to this __ day of _____, 2018 by

Proponent - Full Legal Name

Address

Authorized Signatory

Print Name and Title

Once completed and signed, please return this non-disclosure agreement to:

Sheri Bizarro, Procurement Specialist
By Email: sheri.bizarro@ieso.ca

