

Non-Disclosure Agreement

PROPOSED PROJECT: RFS-13 General Contractor Services – Control Room issued Jan 25, 2019

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 cooperate 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 25 day of January, 2019 by

ANACOND CONTRACTING INC.

Proponent - Full Legal Name

111 ZENWAY BLVD., UNIT 7, VAUGHAN, ON L4H 3H9

Address



Authorized Signatory

ALEN FALLONE - DIRECTOR

Print Name and Title

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

Sophia Little, Procurement Specialist
By Email: Sophia.Little@ieso.ca