



VIA Rail Canada Inc.
Corridor Fleet Renewal Program

REQUEST FOR QUALIFICATIONS

RFQ # 201804002

TABLE OF CONTENTS OF THE REQUEST FOR QUALIFICATIONS

SECTION 1 – GENERAL	4
1.1 Introduction	4
1.2 VIA Rail Background.....	4
1.3 VIA Rail’s Customer-Centric Approach	5
SECTION 2 – PROCUREMENT PROCESS AND PROJECT IMPLEMENTATION OVERVIEW	6
2.1 Overview	6
2.2 Timetable for the RFQ Process	6
2.3 Fairness Monitor	7
2.4 Background Information	7
2.5 RFP Proposal Fee	7
SECTION 3 INSTRUCTIONS TO APPLICANTS	7
3.1 Obtaining the RFQ Documents	7
3.2 RFQ Documents	8
3.3 RFQ Submission Deadline and Late Submissions.....	8
3.4 Contact Person	8
3.5 Applicants’ Meeting.....	8
3.6 Requests for Information	9
3.7 Addenda and Amendments to the RFQ	9
3.8 Process for Revising Prequalification Submissions	9
3.9 Prequalification Submission Property of VIA Rail.....	10
3.10 Prequalification Submission Instructions	10
3.11 Participation by Team Members on More than One Applicant Team	11
3.12 Intellectual Property	11
3.13 Prime Contractors and Joint Ventures.....	11
SECTION 4 – CONTENTS OF THE PREQUALIFICATION SUBMISSION	12
SECTION 5 – RFQ EVALUATION PROCESS OVERVIEW	12
5.1 Evaluation Process	12
5.2 Maximum Number of Shortlisted Applicants and Reserve Shortlisted Applicant	13
5.3 Clarifications of Prequalification Submissions	14
5.4 Financial Submission Confirmation	14
5.5 Reporting of Material Change.....	14
5.6 Administrative Issues in Financial Information Package	15
5.7 Change or Substitution of Proposed Solution	15
SECTION 6 – RFQ EVALUATION	15
6.1 Evaluation Criteria Categories.....	15
SECTION 7 - RFQ PROCESS MATTERS	16

7.1	Prohibited Communications and Lobbying Prohibition.....	16
7.2	Applicant Due Diligence	16
7.3	Costs and Expenses of Applicants	17
7.4	Substitution, Removal or Change in Scope of Team Members	17
7.5	Rights of VIA Rail.....	18
7.6	Government of Canada Legislative Powers	20
7.7	Restriction on Communication between Applicants	20
7.8	Right to Verify	20
7.9	Debriefing	20
7.10	Conflict of Interest.....	21
7.11	Ineligible Persons	22
7.12	Use of Confidential Information	23
7.13	VIA Rail’s Discretion	24
7.14	Access to Information and Protection of Privacy.....	24
7.15	Pre-RFP Meetings	24
7.16	Legal Matters	25
7.17	Procurement Disputes	25
7.18	Government of Canada Code of Conduct for Procurement	25
7.19	Government of Canada Ineligibility and Suspension Policy.....	26
7.20	Contingency Fees.....	26
7.21	Definitions	26
7.22	Interpretation.....	30

Appendix A – RFQ Data Sheet

Appendix B – Prequalification Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria

Appendix C – Prequalification Submission Forms

Appendix D – Request for Information Form

Appendix E – Project Experience Forms

Appendix F – Financial Submission Forms

Appendix G – Form of Confidentiality Agreement

REQUEST FOR QUALIFICATIONS

SECTION 1 – GENERAL

1.1 Introduction

(1) This Request for Qualifications (“**RFQ**”) is issued by VIA Rail Canada Inc. (“**VIA Rail**”). The process set out in this RFQ (the “**RFQ Process**”) will begin with the issuance of this RFQ and will end, subject to Section 5.2(1) and Section 7.5 with the identification of the Shortlisted Applicants that will be eligible to participate further in the competitive procurement process. This RFQ will be followed by the issuance of a request for proposals (“**RFP**”) and an RFP process (“**RFP Process**”).

(2) In the RFQ Documents, all members of an Applicant team are referred to collectively as the “**Applicant**”. Each member of an Applicant is referred to as a “**Team Member**” and each Applicant’s submission is referred to as a “**Prequalification Submission**”. For ease of reference, both prospective Applicants (prior to submission) and Applicants that submit a Prequalification Submission are referred to as “**Applicants**”. Each Applicant shall be represented by an Applicant representative (“**Applicant Representative**”) for the purpose of this RFQ Process. The Applicant Representative shall have the power and authority to bind all of an Applicant’s Team Members for the purposes of this RFQ Process.

(3) This RFQ requires each Applicant to submit the information described in Appendix B - Prequalification Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria (“**Appendix B**”) and to submit the forms contained in Appendix C - Prequalification Submission Forms (“**Appendix C**”) attached to this RFQ. It is anticipated that Applicants may be required to form consortia or joint ventures in order to submit a Prequalification Submission.

(4) The project and the scope of work and responsibilities to which this RFQ applies (the “**Project**”) are described in Appendix A to the RFQ (the “**RFQ Data Sheet**”).

(5) The procurement process in respect of the Project will be managed by VIA Rail. It is anticipated that the Applicant that is ultimately successful in being awarded the work related to this Project (the “**Successful Proponent**” in the subsequent RFP Process) will enter into a Manufacture and Supply Agreement (“**MSA**”) and a Technical Support and Spares Supply Agreement (“**TSSSA**”), (collectively, the “**Agreements**”) with VIA Rail.

1.2 VIA Rail Background

(1) Since 1977, VIA Rail has operated Canada’s inter-city passenger rail service on behalf of the Government of Canada. Over 90 per cent of passengers served by VIA Rail travelled within the busy Corridor.

(2) VIA Rail operates 475 trains per week in eight Canadian provinces over a network of 12,500 kilometers of track. While three per cent of the track is owned and operated by VIA Rail, other railway partners (primarily Canadian National Railway Company (“**CN**”) and Canadian Pacific Railway Company (“**CP**”)) own the remaining ninety-seven per cent of the track. VIA Rail carries approximately 4.4 million passengers per year, predominantly on routes along the Corridor. VIA Rail’s total fleet currently consists of 73 locomotives and 444 coach cars (including passenger, sleeping, service, and baggage cars) operating all of VIA Rail services. A total of approximately 40 locomotives and 160 coach cars provide the services in the Corridor and the Corridor Fleet Renewal Program aims to replace these.

(3) VIA Rail is seeking a supplier to design, manufacture, test, supply, deliver and commission, for safety and regulatory purposes, a number of trainsets with a prescribed capacity of seats and two classes of services (business class and economy class). Trainsets will be required to have a

service proven design and/or platform that meet the requirements of the Corridor Fleet Renewal Program. The supplier will also be required to provide ongoing technical support, spare parts, and other similar services as well as provide support to VIA Rail during its qualification and acceptance process with both Transport Canada (the responsible regulator) and host railways. The supplier will be obliged to provide both a base quantity and configuration of trainsets and optional additional trainset quantities based on prescribed capacity (all as set out in greater detail in the Scope of Supply Summary). VIA Rail's current Corridor services are on non-electrified infrastructure. Since there is an urgency to replace the existing diesel powered fleet for services in the current Corridor which is provided on non-electrified infrastructure, the initial order of 32 trainsets will be diesel powered only, with a required provision for future diesel and electric operation, and will be required to be bi-directional (ability to operate in push-pull mode) to maximize efficiency. The goods and services to be provided by the supplier are referred to as the "**Fleet and Services**" in these RFQ Documents.

(4) The average age of the equipment in VIA Rail's Corridor fleet is now more than 40 years old (over 23 years for the locomotives and over 43 years for the cars) and the fleet is nearing the end of its commercial and useful life and requires extensive maintenance. VIA Rail has been authorized by its shareholder, the Government of Canada, to proceed with the replacement of its Corridor fleet in order to maintain the services provided in the Corridor markets. The aging of the current fleet negatively affects VIA Rail's market share and growth potential. There is also a need to standardize the new Corridor fleet (design and car type) to improve the customer's travel experience as the current fleet is composed of different car types, operating in the same market segments. As such, VIA Rail is undertaking a program to renew its fleet in the Corridor (the "**Corridor Fleet Renewal Program**"). The target date for the commencement of deliveries of the new trainsets for revenue service should be no later than the end of the second quarter of 2022, which must be preceded by a 6-month winter corridor testing. Therefore, the first trainset must be delivered on VIA Rail's infrastructure to complete qualification testing no later than October 2021. Additional details regarding the Corridor Fleet Renewal Program are set out in the Scope of Supply Summary.

(5) VIA Rail's current Corridor services are provided on non-electrified infrastructure. However, over the thirty year life cycle of the trainsets, VIA Rail intends to reduce its use of fossil fuels. Therefore, VIA Rail is working on a long term plan to build its own dedicated infrastructure for passenger service in the Corridor that could be electrified to reduce the use of fossil fuels and allow operation at up to 125 mph. This long term plan has been presented by VIA Rail to its shareholder, the Government of Canada, and has yet to be approved. It should be noted that portions of the new routes on this infrastructure would remain non-electrified. Communities located in the current Corridor would also continue to be served by VIA Rail on the current non-electrified infrastructure.

(6) Options to acquire additional trainsets will be principally predicated on the Government of Canada's decision regarding VIA Rail's long term plan to build its own dedicated infrastructure. In the event that VIA Rail is given the authority to build its own infrastructure in the Corridor but such infrastructure is not electrified, then additional diesel only trainsets will be required to enable increased service frequencies. If VIA Rail is given the authority to build its own infrastructure and electrification is required, then the additional trainsets must be capable of both diesel and electric operation (dual-mode) at up to 125 mph, with seamless transition, and bi-directional operation. If the decision on VIA Rail's long term plan and the timeframe to implement this decision is not yet established at the time of the order for the additional trainsets, then the delivery of the additional trainsets could be deferred until the decision and schedule is available.

1.3 VIA Rail's Customer-Centric Approach

(1) VIA Rail has begun its transformation from being a train operator to a customer centric organization. The Corridor Fleet Renewal Program represents a transformational event in the organization's history that must support VIA Rail's strategy to offer passengers a more meaningful, accessible, environmentally sustainable and safe travel experience. Furthermore, VIA Rail is well known

for its level of inclusive on-board service and is intent on continuing to cultivate this reputation. Currently, VIA Rail's existing Corridor fleet offers a regulatory compliant accessible service, but it is limited in its ability to provide enhanced accessibility for passengers with restricted mobility, sensory and other forms of disabilities. In keeping with VIA Rail's customer focus, it is VIA Rail's expectation that its new fleet will allow it to expand and enhance its service offering to these passengers. Over the years the needs of this customer segment have increased. VIA Rail is committed to providing an enhanced accessible service to these passengers with its new fleet. The interior layout of VIA Rail's new fleet shall emphasize universal accessibility, with benefits for all customers.

SECTION 2 – PROCUREMENT PROCESS AND PROJECT IMPLEMENTATION OVERVIEW

2.1 Overview

(1) The procurement of the Project is expected to take place in the following stages:

(a) Stage 1 – Prequalification Stage

The prequalification stage (the “**Prequalification Stage**”) precedes the RFP Process and is intended to identify the Shortlisted Applicants that are eligible to participate in the RFP Process.

The Prequalification Stage is a stand-alone and independent stage that is complete once the Shortlisted Applicants are identified by VIA Rail.

(b) Stage 2 – RFP Process

The RFP Process is the competitive procurement process that follows the Prequalification Stage and is intended to result in the identification of two negotiations proponents (and ultimately a Successful Proponent) all subject to the RFP as issued.

(c) Stage 3 – Implementation of the MSA and TSSSA Agreements

Once the Successful Proponent and VIA Rail have negotiated and executed the Agreements, the Project will proceed in accordance with the terms and conditions of the Agreements.

2.2 Timetable for the RFQ Process

(1) The timetable for the RFQ Process is set out in the RFQ Data Sheet (the “**Timetable**”). Additional dates subsequent to the completion of the RFQ Process have also been set out in the Timetable for the convenience and information of Applicants. All dates set out in the Timetable relating to the period and activities following the RFQ Process are approximate and subject to change.

(2) VIA Rail may, in its sole discretion, amend any date or time in the Timetable, including, for clarity, the RFQ Submission Deadline. VIA Rail shall amend any date or time in the Timetable by issuing an Addendum in accordance with Section 3.7.

(3) In the event that the approximate dates relating to the period and activities following the RFQ Process are amended after the RFQ Process has ended, such amendments will be communicated to only the Shortlisted Applicants.

2.3 Fairness Monitor

(1) VIA Rail has appointed a Fairness Monitor to monitor this RFQ Process. The name of the Fairness Monitor is set out in the RFQ Data Sheet.

2.4 Background Information

(1) VIA Rail will provide various types of background information related to the Project (the “**Background Information**”) for the Applicants’ review on the Data Site.

(2) VIA Rail does not represent or warrant the accuracy or completeness of any Background Information made available to Applicants and Team Members on the Data Site. Applicants and Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information and any use of or reliance by Applicants or Team Members on any and all such information shall be at the Applicants’ and Team Members’ sole risk and without recourse against VIA Rail. Applicants are cautioned that the Background Information is subject to change.

2.5 RFP Proposal Fee

(1) For the information of Applicants, VIA Rail intends to offer a proposal fee to all Shortlisted Applicants that participate in the RFP Process and that submit a full and proper proposal in response to the RFP, other than the Successful Proponent.

SECTION 3 INSTRUCTIONS TO APPLICANTS

3.1 Obtaining the RFQ Documents

(1) Applicants shall obtain the RFQ Documents directly from the Data Site notwithstanding that VIA Rail may, in its sole discretion, make the RFQ Documents publicly available. Applicants shall obtain all communications related to the RFQ Process directly from the Data Site.

(2) If the Applicant obtains the RFQ Documents in some way other than from the Data Site, the Applicant is solely responsible to ensure that it has received all communications issued by VIA Rail, including all communications in accordance with Sections 3.6 and 3.7 and a failure to obtain any such communication is at the sole and absolute risk of the Applicant.

(3) VIA Rail may add, delete or amend the documents posted to the Data Site at any time during the RFQ Process.

- (4) Each Applicant is solely responsible to ensure that it,
- (a) has the appropriate software which allows the Applicant to access and download documents from MERX and the Data Site; and
 - (b) checks the Data Site frequently for the addition, deletion or amendment of documents at all times during the RFQ Process, keeps itself informed of and takes into account the most current information posted to the Data Site.

(5) The Applicant shall and shall cause each of its Team Members to execute and deliver to VIA Rail via email to the Contact Person a confidentiality agreement in substantially the same form as set out in Appendix G – Form of Confidentiality Agreement. Access to the RFQ Documents and the Data Site will be provided only to Applicants who have complied with this Section 3.1(5).

3.2 RFQ Documents

- (1) The RFQ documents consist of the following documents:
 - (a) this Request for Qualifications;
 - (b) Appendix A – RFQ Data Sheet;
 - (c) Appendix B – Prequalification Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria;
 - (d) Appendix C – Prequalification Submission Forms;
 - (e) Appendix D – Request for Information Form;
 - (f) Appendix E – Project Experience Forms;
 - (g) Appendix F – Financial Submission Form;
 - (h) Appendix G – Form of Confidentiality Agreement; and
 - (i) Addenda, if any,

together, the “**RFQ Documents**”.

3.3 RFQ Submission Deadline and Late Submissions

(1) The Applicant shall ensure that Prequalification Submissions are received, and date and time stamped, by VIA Rail no later than the date and time set out in the Timetable (the “**RFQ Submission Deadline**”). Applicants shall deliver their Prequalification Submissions by hand or courier to the address set out in the RFQ Data Sheet (the “**Submission Address**”). The Applicant must ensure that its Prequalification Submission is date and time stamped by the individual who receives the Prequalification Submission on behalf of VIA Rail at the Submission Address.

(2) VIA Rail will not accept Prequalification Submissions sent by facsimile, electronic mail, telex or other telegraphic means. VIA Rail shall determine whether a Prequalification Submission was submitted before the RFQ Submission Deadline based on the time and date stamp on the Prequalification Submission. It is the sole responsibility of each Applicant to make sure that its Prequalification Submission is delivered to the Submission Address on or before the RFQ Submission Deadline. VIA Rail shall reject Prequalification Submissions received after the RFQ Submission Deadline and shall return such submissions to the Applicant unopened.

3.4 Contact Person

(1) For the purpose of this RFQ Process, Applicants are permitted to contact only the Contact Person in respect of this RFQ Process. The name and coordinates of the Contact Person are set out in the RFQ Data Sheet.

3.5 Applicants’ Meeting

(1) VIA Rail may elect to hold an optional information meeting for prospective Applicants (the “**Applicants’ Meeting**”). If VIA Rail intends to hold an Applicants’ Meeting, the date and time shall be set out in the Timetable and the location of the meeting, as well as any specific instructions to Applicants with

respect to the Applicants' Meeting, shall be set out in the RFQ Data Sheet. If held, the purpose of the Applicants' Meeting shall be to provide further information about the Project and the competitive procurement process and respond to any immediate questions that Applicants may have.

(2) If VIA Rail elects to hold an Applicants' Meeting, Applicants will be required to provide to the Contact Person, by e-mail, a confirmation of attendance and a list of the proposed attendees for the Applicants' Meeting (including individual name, title and firm name) no later than the date set out in the Timetable.

3.6 Requests for Information

(1) Applicants shall submit all requests for information or questions with respect to the RFQ Documents, the RFQ Process, or the Project (“**RFIs**”) by uploading them to Applicant's individual “General RFI” folder on the Data Site no later than the date and time set out in the Timetable and in the form set out in Appendix D. Subject to Section 3.6(4), VIA Rail intends to provide all RFIs and the associated responses (without identifying the Applicant that submitted the RFI) to all prospective Applicants through the Data Site. VIA Rail will not answer any RFI, or any other type of inquiry in respect of the RFQ Documents, the RFQ Process or the Project, that is not submitted in accordance with this Section 3.6(1).

(2) Any Applicant that has questions or concerns as to the meaning of any part of the RFQ Documents or who believes that any part of the RFQ Documents contains any error, inconsistency or omission, must submit its questions or concerns, in writing as an RFI, to the Contact Person in accordance with Section 3.6(1).

(3) Any oral or written response provided by VIA Rail or its Representatives in connection with the RFQ Documents will neither be binding on VIA Rail nor will it change, modify, amend or waive the requirements of the RFQ Documents in any way. Applicants shall not rely on any response provided other than an Addendum issued in accordance with Section 3.7.

(4) Applicants may also submit RFIs on matters they consider to be commercially sensitive or confidential. Applicants must designate such RFIs as “confidential” and must submit them to the Applicant's individual “Commercially Confidential RFI” folder. If VIA Rail determines, in its sole discretion, that an Applicant's commercially confidential RFI is of general application or would provide a significant clarification to all Applicants, VIA Rail may issue a response to that RFI to all Applicants. If VIA Rail agrees with the Applicant's designation of the RFI as commercially confidential, VIA Rail will provide a response to only the Applicant that submitted the commercially confidential RFI.

3.7 Addenda and Amendments to the RFQ

(1) If VIA Rail, in its sole discretion, determines that it is necessary or desirable to amend the RFQ Documents, the amendment will be communicated in writing through the Data Site to all Applicants in the form of a written addendum numbered for identification purposes (each, an “**Addendum**”). Each Addendum will be considered to form an integral part of the RFQ Documents. In the event of any conflict in the wording or any issue of interpretation, Addenda, when issued, take priority over the original wording in the RFQ Documents and any wording in prior Addenda.

3.8 Process for Revising Prequalification Submissions

(1) At any time prior to the RFQ Submission Deadline, an Applicant may withdraw its Prequalification Submission by notifying the Contact Person, in writing, of the Applicant's intention to withdraw.

(2) An Applicant wishing to amend its Prequalification Submission after it has been submitted is permitted to do so only prior to the RFQ Submission Deadline. To carry out such an amendment to its Prequalification Submission, an Applicant shall,

- (i) notify the Contact Person, in writing, of its intention to withdraw and re-submit its Prequalification Submission;
- (ii) withdraw its original Prequalification Submission; and
- (iii) re-submit a complete, revised Prequalification Submission,

and shall complete all actions set out in Section 3.8(2)(i), 3.8(2)(ii) and 3.8(2)(iii) prior to the RFQ Submission Deadline.

3.9 Prequalification Submission Property of VIA Rail

(1) All Prequalification Submissions will become the property of VIA Rail once submitted and will not be returned to the Applicants unless withdrawn pursuant to Section 3.8(1).

3.10 Prequalification Submission Instructions

(1) Applicants shall prepare and submit all Prequalification Submissions in two separately sealed packages of,

- (a) subject to Section 3.10(3), one bound original marked as “Original” and the number of copies set out in the RFQ Data Sheet of,
 - (i) all information required by Appendix B – Table 1 – Financial Information Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria; and
 - (ii) one USB format flash drive that is not password protected containing electronic copies, in PDF or Word format, of all information provided pursuant to Section 3.10(1)(a)(i) and marked “**Financial Information**” on the USB format flash drive,

together in a package marked “Financial Information” (the “**Financial Information Package**”).

- (b) one bound, signed original marked as “Original” and the number of copies set out in the RFQ Data Sheet of,
 - (i) all the information required by Appendix B - Table 2 – Technical Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria, including the completed forms required by Appendix C; and
 - (ii) one USB format flash drive that is not password protected containing electronic copies, in PDF or Word format, of all of the information provided pursuant to Section 3.10(1)(b)(i) and marked “**Technical Information**” on the USB format flash drive,

together in a package marked “Technical Information” (the “**Technical Information Package**”); and

(2) Each Applicant must include the Technical Information Package and the Financial Information Package together in another sealed package. Each Applicant must complete and label them as the Technical Information Package or the Financial Information Package, as applicable, on the exterior of the sealed package.

(3) Notwithstanding Section 3.10(1)(a), Applicants are not required to provide multiple copies of the financial statements of Team Members that are private companies, and, instead, may provide one original set of financial statements of Team Members that are private companies in a separate, sealed envelope in the Financial Information Package.

(4) Applicants should not submit any information other than what is specifically required by this RFQ. Applicants should not submit promotional materials as part of their Prequalification Submissions and Applicants are strongly encouraged to be clear and succinct in their Prequalification Submissions. If there are page limits or other limits set out in Appendix B, the Applicant shall limit its Prequalification Submission, or each component of the Prequalification Submission, to the maximum pages indicated in Appendix B. Applicants are cautioned that VIA Rail will not review or score pages or other materials submitted in excess of the page limits. For greater clarity, any page or other limit set out in the RFQ Documents shall apply to all materials submitted by the Applicant in response to the item that is the subject of such limit, whether submitted in the text of the Prequalification Submission or included as an appendix, schedule or other attachment to the Prequalification Submission.

(5) A Prequalification Submission that is not submitted in a sealed package may be rejected by VIA Rail and VIA Rail shall not be under any obligation to return an unsealed Prequalification Submission to the Applicant or to notify the Applicant that the package was not sealed.

(6) If there is any difference whatsoever between the electronic copy of the Financial Information and the hard copy of the Financial Information, the hard copy of the Financial Information marked as “Original”, as submitted, shall govern. If there is any difference whatsoever between the electronic copy of the Technical Information and the hard copy of the Technical Information, the hard copy marked as “Original” of the Technical Information, as submitted, shall govern.

3.11 Participation by Team Members on More than One Applicant Team

(1) No Team Member of any Applicant shall be a Team Member or otherwise participate in the Prequalification Submission of any other Applicant. The prohibition set out in this Section 3.11(1) also applies to the Affiliates of each Team Member.

3.12 Intellectual Property

(1) Applicants will be required to represent and warrant that they have the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property they require for performance of their obligations pursuant to this RFQ and will pay all applicable fees associated with the use of such intellectual property including any required licence fees and royalties.

3.13 Prime Contractors and Joint Ventures

(1) Applicants are permitted to submit a Prequalification Submission which reflects its desired structure for the Project, subject to this Section 3.13, Section 7.4 and any additional requirements set out in the RFQ Process.

(2) If the Applicant is composed of a prime contractor and subcontractors, Applicants are put on notice that,

- (a) the Applicant can only substitute or remove a Team Member in accordance with Section 7.4;
 - (b) the subcontracting of specified parts of the Project to any entity other than the Team Member identified in the Applicant's Prequalification Submission will require the prior written consent of VIA Rail;
 - (c) the prime contractor will be responsible for the acts, defaults, and neglects of all subcontractors during the Project in accordance with the terms and conditions of the Agreements; and
 - (d) if the Applicant is successful in a subsequent RFP Process, the prime contractor shall sign and enter into the Agreements with VIA Rail.
- (3) For the purposes of this RFQ Process, participants in a joint venture are not required to create a legal entity in order to submit a Prequalification Submission. Applicants are put on notice that,
- (a) the Applicant can only substitute or remove a Team Member in accordance with Section 7.4; and
 - (b) if a joint venture is qualified as a Shortlisted Applicant, all participants in the joint venture will be required to sign and enter into the Agreements with VIA Rail and shall be jointly and severally liable, in accordance with the terms and conditions of the Agreements.
- (4) Applicants are put on notice that if they intend to create a newly formed entity to enter into the Agreements with VIA Rail, any such entity must be formed in a Canadian jurisdiction.

SECTION 4 – CONTENTS OF THE PREQUALIFICATION SUBMISSION

- (1) Applicants shall prepare their Prequalification Submissions by completing and submitting the information and forms required by Appendices A, B, C, E and F to this RFQ, in accordance with the instructions set out in Appendices A, B, C, E and F to this RFQ.

SECTION 5 – RFQ EVALUATION PROCESS OVERVIEW

5.1 Evaluation Process

- (1) VIA Rail will not open Prequalification Submissions publicly. VIA Rail and its Representatives will evaluate the Prequalification Submissions in accordance with the following steps:

- (a) Step 1:

The financial evaluation team established by VIA Rail will evaluate the Financial Information Package of those Prequalification Submissions that pass the substantial completeness review. The financial evaluation team will evaluate and score the Financial Information Package on a pass/fail basis in accordance with the Evaluation Criteria Categories set out in Section 6. In Step 3, VIA Rail will rank only those Prequalification Submissions that receive a "pass" on the financial evaluation.

(b) Step 2:

The technical evaluation team established by VIA Rail will evaluate the Technical Information Package of those Prequalification Submissions that pass the financial evaluation. In the event that there is a tie in the aggregate technical score among two or more Prequalification Submissions for the last Shortlisted Applicant position in the ranking, the rule set out in the RFQ Data Sheet shall apply.

(c) Step 3:

The technical and financial evaluation teams established by VIA Rail will present the preliminary evaluation and ranking results from Steps 1 and 2 to an evaluation steering committee, including the identification of up to four highest ranked Applicants from Steps 1 and 2. The evaluation steering committee will review the findings of the technical and financial evaluation teams and confirm up to a maximum of four highest rated Applicants (from Steps 1 and 2) as the “**Shortlisted Applicants**”.

(d) Step 4:

Subject to Section 5.2 and following approval by VIA Rail, the Contact Person will contact all Applicants to inform them whether or not they have been determined to be a Shortlisted Applicant.

5.2 Maximum Number of Shortlisted Applicants and Reserve Shortlisted Applicant

(1) VIA Rail intends to prequalify, at a maximum, the number of Shortlisted Applicants set out in Section 5.1. However, VIA Rail may, in its sole discretion, determine that it wishes to increase the number of Shortlisted Applicants (or replace a Shortlisted Applicant that has informed VIA Rail that it does not intend to participate in the RFP Process) by adding other Applicants, based on their scores and ranking in this RFQ Process to the list of Shortlisted Applicants, even if those Applicants were not Shortlisted Applicants in the first instance.

(2) In the event that VIA Rail determines, in accordance with Sections 5.4 or 5.5 that an Applicant will not be permitted to continue in the RFQ Process, VIA Rail may, in its sole discretion, invite other Applicants, based on their scores and ranking in this RFQ Process to the list of Shortlisted Applicants, even if those Applicants were not Shortlisted Applicants in the first instance.

(3) Prior to or after the issuance of the RFP, VIA Rail may, in its sole discretion, invite one or more Reserve Shortlisted Applicants to participate in the RFP Process.

(4) Prior to being added to the list of Shortlisted Applicants, upon notification by VIA Rail, a Reserve Shortlisted Applicant will be required to:

- (a) confirm in writing in a form satisfactory to VIA Rail that the Reserve Shortlisted Applicant wishes to participate in the RFP Process;
- (b) provide VIA Rail with confirmations pursuant to Sections 5.4 and 5.5, in a form satisfactory to VIA Rail; and
- (c) either,

- (i) provide VIA Rail with a confirmation that its Team Members have not changed; or
- (ii) make an application pursuant to Section 7.4 for a change to a Team Member.

(5) Each Applicant who is eligible to be added to the list of Shortlisted Applicants pursuant to Sections 5.2(1) or Section 5.2(2) is a "**Reserve Shortlisted Applicant**". This Section 5.2 shall survive the cancellation or conclusion of the RFQ Process.

5.3 Clarifications of Prequalification Submissions

(1) During the evaluation of Prequalification Submissions, VIA Rail may request that any Applicant provide further clarification of any part of its Prequalification Submission. VIA Rail may also, in its sole discretion, verify any information received, including any references, and, for that purpose, the Applicants shall be deemed to consent to and authorize the release of such information to VIA Rail. If required, it may be necessary for an Applicant to attend one or more clarification meetings with VIA Rail.

(2) The evaluation of a Prequalification Submission may include any clarifications provided in writing in response to questions posed by VIA Rail as well as any other investigations made by VIA Rail.

(3) VIA Rail is under no obligation to request clarification of, or verify, any information in any Prequalification Submission, including the clarification or verification of an ambiguity in the Prequalification Submission. VIA Rail may, in its sole discretion, request clarification of, or verify, matters related to none, one or some of the Prequalification Submissions in accordance with Section 7.8.

5.4 Financial Submission Confirmation

(1) During the time period from the end of the RFQ Process until the issuance of the RFP (and thereafter subject to the terms and conditions of the RFP), VIA Rail may, in its sole discretion, request any Applicant to confirm that there have been no material changes to the Financial Information Package submitted by the Applicant. If there have been any material changes to the Applicant's Financial Information Package, the Applicant shall provide details of such changes in accordance with any requirements VIA Rail may impose at that time. VIA Rail shall evaluate the new financial information submitted by the Applicants by applying the evaluation criteria set out in Appendix B and may revise the Applicant's score to reflect the results of the evaluation. If, on the basis of the evaluation of the new financial information, VIA Rail determines that the Applicant has failed in accordance with evaluation criteria set out in Table 2 of Appendix B, the Applicant will no longer be a Shortlisted Applicant.

(2) In the event that a Shortlisted Applicant loses its prequalification status in accordance with Section 5.4(1), VIA Rail may, in its sole discretion, invite a Reserve Shortlisted Applicant in accordance with Section 5.2(2).

5.5 Reporting of Material Change

(1) During the time period from the end of the RFQ Process until the issuance of the RFP documents (and thereafter subject to the terms and conditions of the RFP), each Shortlisted Applicant shall immediately report any material change to the financial information submitted by that Shortlisted Applicant during the RFQ Process and shall re-submit its financial information by providing all financial information originally required by Appendix B. VIA Rail shall evaluate the re-submitted financial information and may revise the Applicant's score to reflect the results of the re-evaluation. If, on the basis of the evaluation of the re-submission of financial information, VIA Rail determines that the Applicant has

failed in accordance with evaluation criteria set out in Appendix B, the Applicant will no longer be a Shortlisted Applicant.

(2) In the event that a Shortlisted Applicant loses its prequalification status in accordance with Section 5.5(1), VIA Rail may, in its sole discretion, invite a Reserve Shortlisted Applicant in accordance with Section 5.2(2).

5.6 Administrative Issues in Financial Information Package

(1) VIA Rail may permit the correction of minor administrative issues in an Applicant's Financial Information Package, including the re-submission of financial information arising from such minor administrative issues, at VIA Rail's sole discretion.

5.7 Change or Substitution of Proposed Solution

(1) After the RFQ Submission Deadline, Shortlisted Applicants will not be permitted to change or substitute the proposed solution set out in their Prequalification Submissions in response to Section 3.1 of Appendix B (the "**Proposed Solution**") without the prior written consent of VIA Rail, which consent may be withheld in the sole discretion of VIA Rail.

(2) A Shortlisted Applicant wishing to change or substitute its Proposed Solution after the RFQ Submission Deadline shall submit a written request to the Contact Person that sets out, in detail, the proposed change or substitution and provides sufficient information to permit VIA Rail to make a determination that the proposed change or substitution is acceptable. VIA Rail will review the proposed change or substitution in order to assess whether, in VIA Rail's sole discretion, based on the application of the Evaluation Criteria for this RFQ, the proposed change or substitution will not negatively impact the quality of the Shortlisted Applicant's original Prequalification Submission.

(3) Applicants are cautioned that Shortlisted Applicants that wish to change or substitute their Proposed Solution after the issuance of the RFP shall be subject to the requirements set out in the RFP.

SECTION 6 – RFQ EVALUATION

6.1 Evaluation Criteria Categories

(1) A Prequalification Submission that has passed the substantial completeness review will be subjected to a scoring evaluation based on the evaluation criteria categories ("**Evaluation Criteria Categories**") set out in Appendix B.

(2) The weightings for the Evaluation Criteria Categories in this RFQ Process are set out in the RFQ Data Sheet. The Evaluation Criteria are set out in Appendix B.

(3) The technical and financial evaluation teams will evaluate each Prequalification Submission based on the Evaluation Criteria.

(4) Applicants must receive a "pass" on the Financial Evaluation Criteria and an Applicant's failure to achieve a "pass" will result in disqualification of the Applicant.

SECTION 7 - RFQ PROCESS MATTERS**7.1 Prohibited Communications and Lobbying Prohibition**

- (1) Neither Applicants nor their Representatives or Team Members shall,
- (a) make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, interest in, or participation in, the Project or this RFQ Process without VIA Rail's prior written consent, which consent may be withheld in VIA Rail's sole discretion; or
 - (b) engage, in any way whatsoever, in any form of political or other lobbying whatsoever in relation to the Project or to influence the outcome of this RFQ Process.

(2) VIA Rail may, in its sole discretion and at any time in the RFQ Process, reject the Prequalification Submission of an Applicant that has contravened Section 7.1(1). VIA Rail may, as an alternative to the rejection of such a Prequalification Submission, impose such conditions on an Applicant's continued participation in the RFQ Process and the RFP Process as VIA Rail, in its sole discretion, may consider in the public interest or otherwise appropriate.

(3) Other than as expressly permitted or required in this RFQ, any contact, or any attempt to contact, by any Applicant or any of its Representatives or Team Members any of the following Persons, directly or indirectly, with respect to this RFQ, RFQ Process or the Project, may lead to disqualification of an Applicant or rejection of a Prequalification Submission:

- (a) any Person employed or engaged by VIA Rail, or any Person who has been employed by VIA Rail, other than the Contact Person;
- (b) any member of the technical evaluation team or the financial evaluation team;
- (c) any member of the evaluation steering committee;
- (d) any expert or advisor assisting VIA Rail, an evaluation team or the evaluation steering committee;
- (e) any member of the Board of VIA Rail or any member of a Board staff;
- (f) any representative of the Government of Canada; or
- (g) any other Applicant or Representative thereof.

7.2 Applicant Due Diligence

(1) The RFQ Documents and the Background Information may not contain all of the information that an Applicant or its Team Members may need in deciding whether to submit a Prequalification Submission.

(2) VIA Rail and its Representatives make no representations or warranties, and there are no representations, warranties or conditions, either express or implied, statutory or otherwise, in fact or in law, with respect to the accuracy or completeness of the RFQ Documents or any information, data, materials or documents (electronic or otherwise) provided to the Applicants or their Team Members in the RFQ Documents or during this RFQ Process with respect to the RFQ Documents or the Project, including

any Background Information. VIA Rail and its Representatives shall not be liable for any claim, action, cost, loss, damage or liability of any kind whatsoever arising from any Applicant's or Team Member's reliance on or use of the RFQ Documents or any other information, data, materials or documents (electronic or otherwise) provided or made available to the Applicants or their Team Members by VIA Rail or its Representatives during this RFQ Process or with respect to the RFQ Documents or the Project, including any Background Information.

(3) Each Applicant, and each Team Member, is responsible for obtaining its own independent financial, legal, accounting, engineering, environmental, and other technical and professional advice with respect to the RFQ Documents, the RFQ Process, and the Project and with respect to any information, data, materials or documents (electronic or otherwise) provided or made available to the Applicants or their Team Members by VIA Rail or its Representatives during this RFQ Process or with respect to the RFQ Documents or the Project, including any Background Information.

(4) Each Applicant and each Team Member is responsible for ensuring that it has all of the information necessary to prepare its Prequalification Submission in response to this RFQ and for independently informing and satisfying itself with respect to the information contained in the RFQ Documents, or provided during this RFQ Process with respect to the RFQ Documents or the Project and with respect to any conditions that may in any way affect its Prequalification Submission.

7.3 Costs and Expenses of Applicants

(1) All costs and expenses incurred by an Applicant or its Team Members in the preparation and delivery of its Prequalification Submission or in providing any additional information necessary for the evaluation of its Prequalification Submission shall be borne solely by that Applicant.

(2) Neither VIA Rail nor its Representatives shall be liable to pay any costs or expenses of any Applicant or any Team Member or to reimburse or compensate an Applicant in any manner whatsoever under any circumstances, including in the event of the rejection of any or all Prequalification Submissions, the cancellation or deferral of the RFQ Process or the cancellation or deferral of the Project.

7.4 Substitution, Removal or Change in Scope of Team Members

(1) Except as provided in Section 7.4(3), an Applicant is not permitted to substitute or remove a Team Member, or change the role or scope of work of any Team Member, after the RFQ Submission Deadline, without VIA Rail's prior written consent. VIA Rail may, in its sole discretion, disqualify an Applicant that contravenes this Section 7.4(1).

(2) An Applicant wishing to substitute or remove a Team Member, or change the scope of work of any Team Member, shall submit a written request to the Contact Person that sets out, in detail, the proposed change to the membership of the Applicant's team.

(3) If an Applicant submits a request pursuant to Section 7.4(1), the following shall apply:

- (a) if the Applicant's request is submitted prior to the completion of Step 2 of the RFQ evaluation process (as set out in Section 5.1), VIA Rail may, in its sole discretion, permit the requested change and re-evaluate those portions of the Applicant's Prequalification Submission that may be impacted by the change; and
- (b) if the Applicant's request is submitted after the completion of Step 2 of the RFQ evaluation process (as set out in Section 5.1), VIA Rail may, in its sole discretion, review the proposed change in order to assess whether,

- (i) the replacement Team Member has equal or better qualifications than the original Team Member; or
- (ii) the proposed change in the scope of work is likely to result in equal or better performance by the Applicant,

to determine whether VIA Rail will, in its sole discretion, consent to the Applicant's request.

(4) If, after the RFQ Submission Deadline and for reasons beyond the control of the Applicant or the applicable Team Member, there is,

- (a) a requirement to substitute or remove a Team Member;
- (b) a change in Control of any Team Member; or
- (c) a material change to the nature of a Team Member,

the Applicant must provide written notice to VIA Rail within five business days after becoming aware of such a change in circumstance. VIA Rail may, in its sole discretion, disqualify the Applicant if VIA Rail, in its sole discretion, considers that there could be a material adverse impact on the Applicant's Prequalification Submission as a result of one of the circumstances set out in Sections 7.4(4)(a), 7.4(4)(b), or 7.4(4)(c). If VIA Rail determines, in its sole discretion, that it will not disqualify the Applicant in such circumstances, VIA Rail may permit the Applicant to propose a substitution for the applicable Team Member, for review and approval by VIA Rail.

(5) Subject to the RFP Process rules, Applicants are cautioned that Shortlisted Applicants will not be permitted to substitute or remove any Team Member or to materially change the roles or scope of work to be performed by any Team Member (from the Team Members' role and scope of work set out in their original Prequalification Submissions), without VIA Rail's prior written consent. In considering whether to grant such a consent, VIA Rail may, in its sole discretion, require some or all of the Team Members, including any Team Member that will no longer form part of the Applicant, to confirm in writing their agreement to the addition, substitution, removal, or change in the Team Members. VIA Rail may, in its sole discretion, disqualify a Shortlisted Applicant that substitutes or removes any Team Member or materially changes the roles or scope of work of a Team Member without VIA Rail's prior written consent.

(6) VIA Rail may, in its sole discretion, require an Applicant to remove and/or replace any Team Member and/or Key Individual pursuant to Section 7.5(1). Any such replacement Team Member and/or Key Individual is at VIA Rail's sole discretion and shall require VIA Rail's prior written consent.

(7) In exercising its sole discretion pursuant to this Section 7.4, VIA Rail may have reference to the Evaluation Criteria Categories set out in the RFQ Documents and such other criteria as VIA Rail may consider relevant.

7.5 Rights of VIA Rail

(1) Notwithstanding anything else in the RFQ Documents, VIA Rail may, at any time and in its sole discretion,

- (a) disqualify an Applicant or Prequalification Submission, or disqualify any Team Member, if

- (i) the Applicant or any Applicant Team Member fails to comply with Applicable Law;
- (ii) the Applicant, any Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have breached the Public Services and Procurement Canada Code of Conduct, the Government of Canada's Ineligibility and Suspension Policy, or the VIA Rail Code of Ethics;
- (iii) the Applicant or any Team Member has been convicted of an offence in connection with, or any services rendered to VIA Rail or any ministry, agency, Board or Commission of the Government of Canada;
- (iv) there are any convictions related to inappropriate bidding practices or unethical behaviour by an Applicant or an Team Member or any of their Affiliates in relation to a procurement in any Canadian jurisdiction; or
- (v) the Applicant or any Team Member, has an economic or other interest or relationship that:
 - (A) is, or could reasonably be perceived to be, contrary to the objectives of the Fleet and Services; or
 - (B) could potentially compromise VIA Rail's reputation or integrity or VIA Rail's procurement process, so as to affect public confidence in that process,

whether or not such interest creates a Conflict of Interest;

- (b) consider, in the evaluation of the Prequalification Submissions, any instances of poor performance of an Applicant, Team Member or Key Individual that VIA Rail has experienced in its dealings with any of the Applicant, its Team Members or its Key Individuals;
- (c) accept or reject any Prequalification Submission or reject all Prequalification Submissions;
- (d) disqualify an Applicant in accordance with Section 7.4;
- (e) disqualify an Applicant if that Applicant or one or more of its Team Members or Key Individuals has, or has failed to disclose, a perceived, potential or actual Conflict of Interest;
- (f) change the Project, including a change in scope;
- (g) cancel this RFQ and reissue the same RFQ or a different request for qualifications document in relation to the Project; or
- (h) cancel or defer this RFQ or the Project at any time,

in each case, without incurring any liability for cost or damages incurred by any Applicant.

(2) Without limitation to any other rights of VIA Rail hereunder, in order to ensure the integrity, openness and transparency of the procurement process, VIA Rail may, in its sole discretion,

- (a) impose at any time on all Applicants and any Team Members additional conditions, requirements or measures with respect to bidding or procurement practices or ethical behaviour of the Applicants and Team Members; and
- (b) require that an Applicant and/or any Team Member provide VIA Rail with copies of its internal policies, processes and controls establishing ethical standards for its procurement practices and evidence of compliance by the Applicant and all Team Members with such policies, processes and controls.

(3) VIA Rail's purpose in this RFQ Process is to obtain a Prequalification Submission that is in the best interest of VIA Rail and most suitable for meeting VIA Rail's objectives.

7.6 Government of Canada Legislative Powers

(1) Applicants are advised that no provision of the RFQ Documents (including a provision stating the intention of VIA Rail) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Government of Canada or Transport Canada in the exercise of their legislative powers.

7.7 Restriction on Communication between Applicants

(1) An Applicant shall not discuss or communicate, directly or indirectly, with any other Applicant, any information whatsoever regarding the preparation of its own Prequalification Submission or the Prequalification Submission of another Applicant in a fashion that would contravene Applicable Law. Each Applicant shall prepare and submit its Prequalification Submission independently and without any connection, knowledge, comparison of information, or arrangement, direct or indirect, with any other Applicant.

(2) For greater clarity, Section 7.7(1) applies to Applicants, their Team Members, their Key Individuals, and their respective Representatives.

7.8 Right to Verify

(1) VIA Rail may, in its sole discretion, independently verify any information in none, one or some of the Prequalification Submissions. VIA Rail may, in its sole discretion, disqualify any Applicant whose Prequalification Submission contains any false or misleading information. VIA Rail may, in its sole discretion, disqualify any Applicant that, in VIA Rail's sole discretion, has failed to disclose any information that would, if disclosed, materially adversely affect VIA Rail's evaluation of the relevant Applicant's Prequalification Submission. VIA Rail is under no obligation to independently verify any information in any Prequalification Submission.

7.9 Debriefing

(1) VIA Rail will offer a debriefing to any Applicant that has not been identified as a Shortlisted Applicant. VIA Rail is not obliged to debrief Shortlisted Applicants with respect to their participation in the RFQ Process. The information provided to an Applicant in the debriefing will relate solely to that Applicant and its Prequalification Submission and not to any other Applicant or Prequalification Submission. Any information provided by VIA Rail in good faith during a debriefing shall not be used against VIA Rail or its Representatives in any way whatsoever, including in any legal action.

7.10 Conflict of Interest

(1) Applicants and Team Members and each of their Advisors, shall disclose Conflicts of Interest in accordance with the following:

- (a) Applicants and Team Members and each of their Advisors shall promptly disclose Conflicts of Interest by a written statement to the Contact Person and as soon as a Conflict of Interest is discovered by the Applicant, Team Member, or an Advisor; and
- (b) Applicants and Team Members and each of their Advisors shall also disclose Conflicts of Interest in their Master Submission Form and their Consent Declarations (in respect of Team Members).

(2) Applicants have an ongoing obligation during the RFQ Process to comply with this Section 7.10.

(3) At the request of VIA Rail, the Applicant shall provide VIA Rail with the Applicant's proposed means to mitigate and minimize to the greatest extent practicable any Conflict of Interest. The Applicant shall submit any additional information to VIA Rail that VIA Rail considers necessary to properly assess the Conflict of Interest.

(4) VIA Rail may, in its sole discretion, exclude any Applicant, Team Member or Applicant Advisor on the grounds of Conflict of Interest.

(5) Without limiting the generality of Sections 7.10(4) or 7.10(6), VIA Rail may, in its sole discretion, require the Applicant, Team Member or an Advisor to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.

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

(7) For the purposes of this RFQ Process, "**Conflict of Interest**" includes any perceived, potential or actual situation or circumstance where an Applicant, any Team Member, any Applicant Advisor or any of the employees of an Applicant, Team Member or Applicant Advisor engaged in the development or oversight of development of the Applicant's Prequalification Submission (including for such employees in their personal capacities):

- (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of VIA Rail or its Advisors; or
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of an Applicant's obligations under the Agreements if that Applicant was determined to be the Successful Proponent under the RFP Process;

- (b) has contractual or other obligations to VIA Rail that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFQ Process or the Fleet and Services; or
- (c) has knowledge of confidential information (other than Confidential Information) that,
 - (i) has been made available to the Applicant, any Team Member or any Applicant Advisor by VIA Rail;
 - (ii) is of strategic and/or material relevance to the RFQ Process or to the Fleet and Services; and
 - (iii) is not available to other Applicants and that could or could be seen to give the Applicant an unfair competitive advantage.

(8) The final determination of whether a Conflict of Interest exists shall be made by VIA Rail in its sole discretion.

(9) The Applicant, Team Members and their respective Advisors shall,

- (a) no later than the date set out in the Timetable, disclose all information in respect of the Corridor Fleet Renewal Program which the Applicant, the Team Member, or their respective Advisors have generated or have available to them as a result of work carried out by the Applicant, Team Members or their respective Advisors, for VIA Rail, or in anticipation of, the Corridor Fleet Renewal Program; and
- (b) at the request of VIA Rail, provide a director's or officer's certificate confirming that the requirements of Section 7.10(9)(a) have been complied with by the Applicant and, as applicable, the Team Members and their respective Advisors.

(10) For clarity, VIA Rail may, in its sole discretion, circulate the information provided pursuant to Section 7.10(9)(a) to other Applicants, Team Members, and their respective Advisors. If any Applicant or Team Member becomes aware of relevant information of the type set out in Section 7.10(9)(a) that has not been made available to all Applicants, that Applicant shall disclose such information promptly to the Contact Person.

7.11 Ineligible Persons

(1) As a result of their current or previous involvement in the Corridor Fleet Renewal Program, the persons named as "**Ineligible Persons**" in the RFQ Data Sheet (collectively, "**Ineligible Persons**") and, subject to Sections 7.11(3) and 7.11(4) any person controlled by, that controls or that is under common control with the Ineligible Persons (each an "**Ineligible Person's Affiliate**") are not eligible to participate as an Applicant, Team Member or Advisor to either the Applicant or Team Member.

(2) VIA Rail may amend the Ineligible Persons list in the RFQ Data Sheet from time to time during the RFQ Process.

(3) An Ineligible Person's Affiliate or an Ineligible Person identified in the RFQ Data Sheet as being permitted to seek VIA Rail's written consent pursuant to this Section 7.11(3) (an "**Identified Ineligible Person**") may be eligible to participate as a Team Member or Advisor to the Applicant or Team Member only after it has obtained a written consent from VIA Rail permitting it to participate in the RFQ Process. To obtain consent to participate as a Team Member or Advisor to the Applicant, or an Advisor

to an Team Member, the Applicant must submit a request for consent to the Contact Person that includes the following information:

- (a) the full legal name of the Ineligible Person's Affiliate or Identified Ineligible Person that is the subject of the request;
- (b) in the case of an Ineligible Person's Affiliate, information regarding the Ineligible Person's Affiliate's relationship to the Ineligible Person listed in the RFQ Data Sheet; and
- (c) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any Conflict of Interest with respect to the Ineligible Person's Affiliate or Identified Ineligible Person.

(4) Upon the Contact Person's receipt of an Applicant's properly completed request for consent in accordance with Section 7.11(3), VIA Rail shall, in its sole discretion, make a determination as to whether it considers the Ineligible Person's Affiliate or Identified Ineligible Person has a Conflict of Interest and whether the impact of such Conflict of Interest can be appropriately managed, mitigated or minimized. The Applicant shall be notified of VIA Rail's decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person's Affiliate or Identified Ineligible Person is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, VIA Rail shall communicate this to the Applicant and, in the case of an Ineligible Person's Affiliate, add the Ineligible Person's Affiliate to the Ineligible Persons list by Addendum.

7.12 Use of Confidential Information

(1) Each Applicant must declare, and continues to be under an obligation to declare, that it does not have knowledge of or the ability to avail itself of Confidential Information of VIA Rail relevant to the Project if VIA Rail has not specifically authorized such use.

- (2) Confidential Information,
 - (a) shall remain the sole property of VIA Rail and the Applicant shall treat it as confidential;
 - (b) may not be used by the Applicant for any other purpose other than submitting a Prequalification Submission or the performance of any subsequent agreement relating to the Project;
 - (c) shall not be disclosed by the Applicant to any Person who is not involved in the Applicant's preparation of its Prequalification Submission or the performance of any subsequent agreement relating to the Project, without prior written consent of VIA Rail;
 - (d) if requested by VIA Rail, will be returned to VIA Rail no later than ten days after such request; and
 - (e) shall not be used in any way that is detrimental to VIA Rail.

(3) Each Applicant shall be responsible for any breach of the provisions of this Section 7.12 by any Person to whom it discloses the Confidential Information. Each Applicant acknowledges and agrees that a breach of the provisions of this Section 7.12 would cause VIA Rail to suffer loss which could

not be adequately compensated by damages, and that VIA Rail may, in addition to any other remedy or relief, enforce any of the provisions of this Section 7.12 upon submission to a court of competent jurisdiction for injunctive relief without proof of actual damage to VIA Rail.

(4) The provisions in this Section 7.12 shall survive any cancellation of this RFQ or the RFP and shall survive the conclusion of the RFQ Process and RFP Process.

7.13 VIA Rail's Discretion

Unless explicitly otherwise stated herein, all references in the RFQ Documents to VIA Rail's "discretion" or "sole discretion" means VIA Rail's absolute sole unqualified subjective discretion.

7.14 Access to Information and Protection of Privacy

(1) The Applicant acknowledges and agrees that VIA Rail is subject to the *Access to Information Act* (R.S.C., 1985, c. A-1) ("**Access to Information Act**") as amended from time to time. A request for confidential treatment by the Applicant, including in the Applicant's Prequalification Submission, will not supersede VIA Rail's legal obligations under the Access to Information Act. Unless otherwise permitted by law, VIA Rail will not honour requests to keep entire Prequalification Submissions confidential. Applicants must show the specific grounds under the Access to Information Act or other law or rule that support confidential treatment. VIA Rail will not advise Applicants as to the nature or content of documents entitled to protection from disclosure under the Access to Information Act, regulations under the Access to Information Act, or other Applicable Laws and implementing regulations, or as to the interpretation of the Access to Information Act. Applicants are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Prequalification Submissions.

(2) The Applicant understands that VIA Rail may not assert on behalf of a third party an exception to the public release of materials that contain trade secrets or confidential or proprietary information. If a request is received by VIA Rail for the release of an Applicant's propriety or confidential information, and VIA Rail agrees to withhold the information, VIA Rail will notify the Applicant of the proposed recipient. In any event, the Applicant shall defend and hold VIA Rail harmless from any legal action arising from any request for the release of Applicant's propriety or confidential information.

(3) Subject to the provisions of the Access to Information Act, shall not be liable in any way whatsoever to any Applicant or Team Member if Applicant information or the Applicant's Prequalification Submission, in whole or in part, is disclosed based on an order or decision of the under the Access to Information Act or otherwise as required under Applicable Law.

(4) The Applicant acknowledges and agrees that VIA Rail intends to disclose all information submitted to VIA Rail, by Applicants and Team Members, to Transport Canada and the Government of Canada.

7.15 Pre-RFP Meetings

(1) VIA Rail may, in its sole discretion, convene meetings prior to the commencement of the RFP Process (each, a "**Pre-RFP Meeting**") for Shortlisted Applicants on the dates and at the times set out in a notice to be provided by a Representative of VIA Rail. While attendance at a Pre-RFP Meeting is not mandatory, Shortlisted Applicants are strongly encouraged to attend. A Shortlisted Applicant's failure to attend a Pre-RFP Meeting is at the Shortlisted Applicant's sole risk and responsibility.

(2) Shortlisted Applicants may ask questions and seek clarifications at a Pre-RFP Meeting. If VIA Rail gives oral answers at a Pre-RFP Meeting, those answers shall not be considered final unless

the Shortlisted Applicant also submits those questions in accordance with Section 3.6 and responses are issued in accordance with Section 3.6.

(3) No statement, consent, waiver, acceptance, approval or anything else said or done in any Pre-RFP Meeting by VIA Rail or any of their respective advisors, employees or Representatives shall amend or waive any provision of the RFQ Documents or the RFP documents, or be binding on VIA Rail or be relied upon in any way by Shortlisted Applicants or their advisors, except when and only to the extent expressly confirmed in an Addendum to the RFQ Documents issued in accordance with Section 3.7 and/or an Addendum to the RFP documents issued in accordance with the RFP, as applicable.

7.16 Legal Matters

(1) This RFQ is not an offer to enter into any contract of any kind whatsoever. This RFQ is not intended to create a bidding contract (often referred to as “Contract A”).

(2) Notwithstanding that in accordance with Section 7.16(1) this RFQ is not intended to create "Contract A", the Applicant and all other entities participating in this RFQ Process agree that if VIA Rail is found to be liable, in any way whatsoever, for any act or omission in respect of this RFQ Process, the total liability of VIA Rail to any Applicant, Team Member or any other entity participating in this RFQ Process, and the aggregate amount of damages recoverable against VIA Rail for any matter relating to or arising from any act or omission, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct, judicial review or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of VIA Rail shall be no greater than the Applicant's cost of preparing its Prequalification Submission or the amount set out in the RFQ Data Sheet, whichever is less.

(3) This Section 7.16 shall survive any cancellation of this RFQ and shall survive the conclusion of the RFQ Process.

7.17 Procurement Disputes

(1) Procurement disputes will be resolved either in accordance with the trade agreement applicable to the dispute or, if no trade agreement is applicable, will be referred to the Fairness Monitor in the first instance and then to the Applicants legal remedies.

7.18 Government of Canada Code of Conduct for Procurement

(1) In order to establish standards for ethical conduct and integrity during the RFQ Process and the subsequent RFP Process, VIA Rail has determined that it will oblige Applicants, Team Members and their respective Advisors to be compliant with the Public Services and Procurement Canada (“PSPC”) Code of Conduct for Procurement.

(2) Applicants, Team Members and their respective Advisors are strongly cautioned to review the PSPC Code of Conduct for Procurement which is available as Background Information on the Data Site.

(3) By submitting a Prequalification Submission, the Applicant certifies that except for those offences where a criminal pardon has been obtained or leniency granted, neither the Applicant, any Team Member nor any of their respective parents, subsidiaries or other Affiliates has ever been convicted or is the subject of outstanding criminal charges in respect of any of the following:

- (a) payment of a contingency fee to a person to whom the *Lobbying Act* (1985, c. 44 (4th Supp.)) as amended from time to time) applies;

- (b) corruption, collusion, bid-rigging or any other anti-competitive activity in the procurement process;
- (c) section 121 (Frauds on the government and Contractor subscribing to election fund), section 124 (Selling or purchasing office), section 380 (Fraud) or section 418 (Selling defective stores to Her Majesty) of the *Criminal Code of Canada* (R.S.C., 1985, c.C-46, as amended from time to time), or
- (d) paragraph 80(1)(d) (Offences and punishment - false entry, certificate or return), subsection 80(2) (Fraud against Her Majesty) or section 154.01 (Fraud against Her Majesty) of the *Financial Administration Act* (R.S.C., 1985, c. F-11, as amended from time to time).

7.19 Government of Canada Ineligibility and Suspension Policy

(1) VIA Rail has determined that it will oblige Applicants, Team Members and their respective Advisors to be compliant with the Government of Canada's Ineligibility and Suspension Policy (the "**Ineligibility and Suspension Policy**").

(2) Applicants, Applicant Team Members and their respective Advisors are strongly cautioned to review the Ineligibility and Suspension Policy which is available as Background Information on the Data Site.

(3) The list of ineligible and suspended suppliers is available from PSPC. Any Applicant, Team Member or Advisor who has been determined by PSPC to be ineligible or suspended in accordance with the Ineligibility and Suspension Policy may be ineligible to participate in this RFQ Process or the subsequent RFP Process.

(4) The Applicant shall submit a complete list of all foreign criminal charges and convictions pertaining to itself, its Affiliates and its proposed first tier subcontractors that, to the best of its knowledge and belief, may be similar to one of the listed offences in the Ineligibility and Suspension Policy using an "Integrity Declaration Form" attached to the Master Submission Form. If an Applicant fails to provide the information requested in this Section 7.19 or such information is incomplete or inaccurate, or the information contained in a certification or declaration relating to the Ineligibility and Suspension Policy is determined by VIA Rail to be false or misleading in any respect, VIA Rail may disqualify the Applicant and terminate its continued participation in the RFQ Process.

7.20 Contingency Fees

(1) By submitting a Prequalification Submission, the Applicant certifies that it has not, nor has any Team Member, directly or indirectly, paid or agreed to pay and agrees that it will not, directly or indirectly, pay a contingency fee for the solicitation, negotiation or obtaining of an award for the Fleet and Services to any person, other than an employee of the Applicant acting in the normal course of the employee's duties. In this Section 7.20, "contingency fee" means any payment or other compensation that depends or is calculated based on a degree of success in soliciting, negotiating or obtaining an award for the Fleet and Services and "person" includes any individual who is required to file a return with the registrar pursuant to section 5 of the *Lobbying Act*, 1985, c. 44 (4th Supplement), as amended from time to time.

7.21 Definitions

Unless otherwise specified or the context otherwise requires, capitalized terms used in the RFQ Documents shall have the meanings set out in this Section 7.21.

“**Access to Information Act**” is defined in Section 7.14(1).

“**Addenda**” or “**Addendum**” is defined in Section 3.7(1).

“**Advisor**” means any Person retained to provide professional advice to any one of VIA Rail, an Applicant, or a Team Member, as applicable.

“**Affiliate**” means an “affiliate” as that term is used in the *Canada Business Corporations Act* and any successor legislation thereto;

“**Agreements**” is defined in Section 1.1(5).

“**Appendix B**” is defined in Section 1.1(3).

“**Appendix C**” is defined in Section 1.1(3).

“**Applicable Law**” means:

- (1) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
- (2) any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority; and
- (3) any judgment, order, direction or directive of a relevant court of law, board, arbitrator or administrative agency which is binding on VIA Rail or an Applicant in the Province of Quebec,

in each case, in force in the Province of Quebec and binding on VIA Rail or an Applicant.

“**Applicant**” is defined in Section 1.1(2).

“**Applicant Representative**” is defined in Section 1.1(2).

“**Applicants’ Meeting**” is defined in Section 3.5(1).

“**Background Information**” is defined in Section 2.4(1).

“**CN**” is defined in Section 1.2(2).

“**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured in any way, whether before or after the Prequalification Submission, from VIA Rail in connection with the Project, but does not include any information which (i) is or becomes generally available to the public other than as a result of a breach of Section 7.12, (ii) becomes available to the Applicant on a non-confidential basis from a source other than VIA Rail so long as that source is not bound by a confidentiality agreement with respect to the information or otherwise prohibited from transmitting the information to the Applicant by a contractual, legal or fiduciary obligation, or (iii) the Applicant is able to demonstrate was known to it on a non-confidential basis before it was disclosed to the Applicant by the Government or VIA Rail.

“**Conflict of Interest**” is defined in Section 7.10(7).

“**Commercial Summary**” means the summary of key commercial terms of the Corridor Fleet Renewal Program provided to Applicants as part of the Background Information.

“**Consent Declaration**” means Form C-2 of Appendix C.

“**Contact Person**” means the individual named as the contact person in the RFQ Data Sheet.

“**Control**” has the meaning ascribed thereto in the *Canada Business Corporations Act*.

“**Corridor**” means VIA Rail’s passenger rail service network located between Windsor, Ontario and Quebec City, Quebec and includes the Montreal Maintenance Centre, the Toronto Maintenance Centre and all other non-mainline tracks and sidings which support VIA Rail’s service between Windsor and Quebec City. The Corridor includes the current corridor in utilization and the future expanded corridor including high frequency rail.

“**Corridor Fleet Renewal Program**” is defined in Section 1.2(4).

“**CP**” is defined in Section 1.2(2).

“**Data Site**” is the electronic document management website that facilitates VIA Rail and Applicant interaction as set out in these RFQ Documents.

“**Evaluation Criteria**” means the evaluation criteria set out in Appendix B.

“**Evaluation Criteria Categories**” is defined in Section 6.1(1).

“**Fairness Monitor**” means the Person named as the Fairness Monitor in the RFQ Data Sheet.

“**Financial Information**” is defined in Section 3.10(1)(a)(ii).

“**Financial Information Package**” is defined in Section 3.10(1)(a).

“**Fleet and Services**” is defined in Section 1.2(3).

“**Governmental Authority**” means any Canadian federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over VIA Rail, an Applicant or any aspect of the RFQ Documents, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.

“**Identified Ineligible Persons**” is defined in Section 7.11.

“**Ineligibility and Suspension Policy**” is defined in Section 7.19(1).

“**Ineligible Persons**” is defined in Section 7.11.

“**Ineligible Person’s Affiliate**” is defined in Section 7.11(1).

“**Key Individual**” means an individual who will play an important role in the Project on behalf of a Team Member as set out in Appendix B.

“**Master Submission Form**” means Form C-1 of Appendix C.

“**MSA**” is defined in Section 1.1(5).

“**Person**” means any individual, partnership, limited partnership, joint venture, syndicate, sole proprietorship, company, corporation or body corporate with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or governmental agency authority or entity however designated or constituted.

“**Prequalification Stage**” is defined in Section 2.1(1)(a).

“**Prequalification Submission**” is defined in Section 1.1(2).

“**Pre-RFP Meeting**” is defined in Section 7.15(1).

“**Project**” is defined in Section 1.1(4).

“**Proposed Solution**” is defined in Section 5.7(1).

“**PSPC**” is defined in Section 7.18(1).

“**Representatives**” means the directors, officers, ministers, employees, agents, accountants, consultants, financial or legal advisors and all other representatives of the Person being referred to.

“**Reserve Shortlisted Applicant**” means the Applicant(s) identified by VIA Rail pursuant to Section 5.2(5).

“**RFIs**” is defined in Section 3.6(1).

“**RFP**” is defined in Section 1.1(1).

“**RFP Process**” is defined in Section 1.1(1).

“**RFQ**” is defined in Section 1.1(1).

“**RFQ Data Sheet**” is defined in Section 1.1(4).

“**RFQ Documents**” is defined in Section 3.2.

“**RFQ Process**” is defined in Section 1.1(1).

“**RFQ Submission Deadline**” is defined in Section 3.3(1).

“**Scope of Supply Summary**” means the summary of the technical requirements of the Corridor Fleet Renewal Program provided to Applicants as part of the Background Information.

“**Shortlisted Applicants**” is defined in Section 5.1(1)(c).

“**Submission Address**” is defined in Section 3.3(1).

“**Successful Proponent**” is defined in Section 1.1(5).

“**Team Member**” is defined in Section 1.1(2).

“**Technical Information**” is defined in Section 3.10(1)(b)(ii).

“**Technical Information Package**” is defined in Section 3.10(1)(b).

“**TSSSA**” is defined in Section 1.1(5).

“**VIA Rail**” is defined in Section 1.1(1).

“**VIA Rail Code of Ethics**” means the VIA Rail Code of Ethics provided to Applicants as part of the Background Information.

“**Timetable**” is defined in Section 2.2(1).

7.22 Interpretation

In the RFQ Documents, words in the singular include the plural and vice-versa and words in one gender include all genders, all references to dollar amounts are to the lawful currency of Canada, and the words “include”, “includes” or “including” means “include without limitation”, “includes without limitation” and “including without limitation”, respectively, and the words following “include”, “includes” or “including” will not be considered to set forth an exhaustive list.

Any reference in the RFQ Documents to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.

23317683.13

**APPENDICES TO THE RFQ
APPENDIX A - RFQ DATA SHEET**

RFQ REFERENCE	ITEM																										
<i>RFQ Section 1.1(4) – Scope of the Project</i>	VIA Rail intends to contract for the design, supply, manufacture, test, deliver and commission a base order of 32 trainsets with options for additional quantities, along with all the required ancillary deliverables for the proper introduction of this new fleet. The Project also includes a technical support and spares supply services agreement for an initial 15-year term and an option for an additional 15 years.																										
<i>RFQ Section 2.2(1) – Timetable for the RFQ Process</i>	<p>Timetable:</p> <table border="1"> <thead> <tr> <th style="background-color: #d3d3d3;">Step in the Procurement Process</th> <th style="background-color: #d3d3d3;">Date</th> </tr> </thead> <tbody> <tr> <td>Issue RFQ</td> <td>April 16, 2018</td> </tr> <tr> <td>Last Day for Applicants to confirm attendees at Applicants' Meeting</td> <td>April 27, 2018</td> </tr> <tr> <td>Applicants' Meeting</td> <td>May 3, 2018</td> </tr> <tr> <td>Last Day for Applicants to disclose all information in respect of the Corridor Fleet Renewal Program in accordance with RFQ Section 7.10(9)(a)</td> <td>May 8, 2018</td> </tr> <tr> <td>Last Day for Applicants to submit RFIs</td> <td>May 22, 2018</td> </tr> <tr> <td>Last Day for Issuance of Addenda (Except Addenda related to Timetable changes)</td> <td>May 29, 2018</td> </tr> <tr> <td>RFQ Submission Deadline</td> <td>June 6, 2018 at 2:00 PM EDT</td> </tr> <tr> <td>Approximate Date of Notification of Shortlisted Applicants</td> <td>June, 2018</td> </tr> <tr> <td>Approximate Date of RFP Issuance</td> <td>June, 2018</td> </tr> <tr> <td>Approximate Date of RFP Submission Deadline</td> <td>September/October 2018</td> </tr> <tr> <td>Approximate Date of RFP Award</td> <td>December 2018</td> </tr> <tr> <td>Approximate Date of Commercial Close Target Date</td> <td>December 2018</td> </tr> </tbody> </table>	Step in the Procurement Process	Date	Issue RFQ	April 16, 2018	Last Day for Applicants to confirm attendees at Applicants' Meeting	April 27, 2018	Applicants' Meeting	May 3, 2018	Last Day for Applicants to disclose all information in respect of the Corridor Fleet Renewal Program in accordance with RFQ Section 7.10(9)(a)	May 8, 2018	Last Day for Applicants to submit RFIs	May 22, 2018	Last Day for Issuance of Addenda (Except Addenda related to Timetable changes)	May 29, 2018	RFQ Submission Deadline	June 6, 2018 at 2:00 PM EDT	Approximate Date of Notification of Shortlisted Applicants	June, 2018	Approximate Date of RFP Issuance	June, 2018	Approximate Date of RFP Submission Deadline	September/October 2018	Approximate Date of RFP Award	December 2018	Approximate Date of Commercial Close Target Date	December 2018
Step in the Procurement Process	Date																										
Issue RFQ	April 16, 2018																										
Last Day for Applicants to confirm attendees at Applicants' Meeting	April 27, 2018																										
Applicants' Meeting	May 3, 2018																										
Last Day for Applicants to disclose all information in respect of the Corridor Fleet Renewal Program in accordance with RFQ Section 7.10(9)(a)	May 8, 2018																										
Last Day for Applicants to submit RFIs	May 22, 2018																										
Last Day for Issuance of Addenda (Except Addenda related to Timetable changes)	May 29, 2018																										
RFQ Submission Deadline	June 6, 2018 at 2:00 PM EDT																										
Approximate Date of Notification of Shortlisted Applicants	June, 2018																										
Approximate Date of RFP Issuance	June, 2018																										
Approximate Date of RFP Submission Deadline	September/October 2018																										
Approximate Date of RFP Award	December 2018																										
Approximate Date of Commercial Close Target Date	December 2018																										
<i>RFQ Section 2.3(1) – Fairness Monitor</i>	Fairness Monitor: P1 Consulting Inc.																										
<i>RFQ Section 3.3(1) –Submission Address</i>	Submission Address: VIA Rail Canada Inc. 3 Place Ville Marie, Suite 500 Montréal - Québec - H3B 2C9 Attention: Marc James, Senior Specialist, Procurement																										

RFQ REFERENCE	ITEM
<i>RFQ Section 3.4(1)</i> – <i>Contact Person</i>	<p>Contact Person and Contact Person coordinates: Marc James Senior Specialist, Procurement VIA Rail Canada Inc. 3 Place Ville-Marie, Suite 500 Montréal, Québec H3B 2C9 Email : fleetrenewalprocurement@viarail.ca</p>
<i>RFQ Section 3.5(1)</i> - <i>Applicants' Meeting</i>	<p>Information Session for Applicants: The Applicants' Meeting will be conducted via webinar. VIA Rail will communicate further details regarding access to the webinar via a notice posted to the Data Site.</p>
<i>RFQ Section 3.10(1)</i> – <i>Number of Bound Copies</i>	<p>Number of bound copies of the Technical Information Package: 6 Number of bound copies of the Financial Information Package: 4</p>
<i>RFQ Section 5.(1)(b)</i> – <i>Event of a Tie</i>	<p>The following rules shall apply in the event of a tie: In the event that there is a tie in the aggregate technical score among two or more Prequalification Submissions for the last Shortlisted Applicant position in the ranking, VIA Rail may, in its sole discretion, waive the maximum number of Shortlisted Applicants and shortlist a maximum of 5 Applicants.</p>

RFQ REFERENCE	ITEM																														
<p><i>RFQ Section 6.1(2) - Evaluation Criteria Categories</i></p>	<p>Weighting of Evaluation Criteria Categories:</p> <table border="1" data-bbox="370 321 1474 909"> <thead> <tr> <th colspan="2" data-bbox="370 321 1474 373">Evaluation Criteria Categories</th> </tr> <tr> <th colspan="2" data-bbox="370 373 1474 422">Financial Evaluation Criteria Categories</th> </tr> </thead> <tbody> <tr> <td data-bbox="370 422 1187 470">Financial Capacity</td> <td data-bbox="1187 422 1474 470">Pass/Fail</td> </tr> <tr> <th colspan="2" data-bbox="370 470 1474 518">Technical Evaluation Criteria Categories</th> </tr> <tr> <th colspan="2" data-bbox="370 518 1474 554">Points</th> </tr> <tr> <th colspan="2" data-bbox="370 554 1474 590">APPLICANT EXPERIENCE</th> </tr> <tr> <td data-bbox="370 590 1187 638">Project Experience</td> <td data-bbox="1187 590 1474 638">75</td> </tr> <tr> <td data-bbox="370 638 1187 674">Organizational Structure</td> <td data-bbox="1187 638 1474 674">75</td> </tr> <tr> <td data-bbox="370 674 1187 709">Key Individuals</td> <td data-bbox="1187 674 1474 709">50</td> </tr> <tr> <th colspan="2" data-bbox="370 709 1474 745">PROPOSED SOLUTION</th> </tr> <tr> <td data-bbox="370 745 1187 781">Proposed Solution</td> <td data-bbox="1187 745 1474 781">450</td> </tr> <tr> <th colspan="2" data-bbox="370 781 1474 816">DELIVERABILITY</th> </tr> <tr> <td data-bbox="370 816 1187 852">Master Schedule</td> <td data-bbox="1187 816 1474 852">200</td> </tr> <tr> <td data-bbox="370 852 1187 888">Manufacturing Capability</td> <td data-bbox="1187 852 1474 888">150</td> </tr> <tr> <td data-bbox="370 888 1187 909" style="text-align: right;">Total Technical Evaluation</td> <td data-bbox="1187 888 1474 909">1000</td> </tr> </tbody> </table>	Evaluation Criteria Categories		Financial Evaluation Criteria Categories		Financial Capacity	Pass/Fail	Technical Evaluation Criteria Categories		Points		APPLICANT EXPERIENCE		Project Experience	75	Organizational Structure	75	Key Individuals	50	PROPOSED SOLUTION		Proposed Solution	450	DELIVERABILITY		Master Schedule	200	Manufacturing Capability	150	Total Technical Evaluation	1000
Evaluation Criteria Categories																															
Financial Evaluation Criteria Categories																															
Financial Capacity	Pass/Fail																														
Technical Evaluation Criteria Categories																															
Points																															
APPLICANT EXPERIENCE																															
Project Experience	75																														
Organizational Structure	75																														
Key Individuals	50																														
PROPOSED SOLUTION																															
Proposed Solution	450																														
DELIVERABILITY																															
Master Schedule	200																														
Manufacturing Capability	150																														
Total Technical Evaluation	1000																														
<p><i>RFQ Section 7.11(1)- Ineligible Persons</i></p>	<p>Ineligible Persons: The following are Ineligible Persons:</p> <ol style="list-style-type: none"> (1) Blake, Cassels & Graydon LLP (2) Canarail Consultants Inc. (3) CH2M Hill Companies, Ltd. (4) Jacobs Engineering Group Inc. (5) P1 Consulting Inc. (6) PricewaterhouseCoopers LLP* (7) McCarthy Tétrault LLP* (8) SNC-Lavalin* <p>*These Ineligible Persons are permitted to seek VIA Rail’s written consent to participate pursuant to RFQ Sections 7.11(3) and 7.11(4).</p>																														
<p><i>RFQ Section 7.16(2) – Limitation of Liability</i></p>	<p>\$50,000</p>																														

23317693.14

**APPENDIX B TO THE RFQ - PREQUALIFICATION SUBMISSION REQUIREMENTS, EVALUATION CRITERIA
CATEGORIES AND EVALUATION CRITERIA****PART 1 INSTRUCTIONS TO APPLICANTS****1. Introduction**

- (1) The Prequalification Submission requirements for the Financial Information Package are set out in Table 1 (Financial Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria) and the Prequalification Submission requirements for the Technical Information Package are set out in Table 2 (Technical Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria) in this Appendix B.
- (2) Each Applicant should prepare its Financial Information Package and its Technical Information Package by providing the information set out in Table 1 and Table 2 in the order listed in Table 1 or Table 2, as applicable. Table 1 and Table 2 also set out the Evaluation Criteria Categories and the Evaluation Criteria that will be used by VIA Rail in its scoring and evaluation of each Prequalification Submission.
- (3) Applicants are advised to submit their Prequalification Submissions in 11 point font, double-sided, and on 8.5"x11" page size. Page limits and other limits, if applicable, are indicated in the Table 1 and Table 2. Page limits and other limits are maximum limits and do not need to be reached for each item indicated, but should not be exceeded. Applicants are cautioned to review the RFQ in terms of the rules that apply if Applicants exceed page limits.
- (4) Where project examples or resumes of Key Individuals are required for a Team Member, the page number specified for such examples or resumes is a maximum number of pages. This maximum number of pages is a total number for the relevant Team Member, regardless of whether the Team Member is a joint venture or otherwise comprised of more than one Person.

2. General Guidelines and Instructions with Respect to the Prequalification Submission Requirements

- (1) Each Applicant is reminded that the objective of its Prequalification Submission is to assist VIA Rail in choosing the most qualified Applicants to be shorted-listed as Shortlisted Applicants. Subject to the requirements of the RFQ Documents, each Applicant should endeavor to present its information in a form that will assist VIA Rail in distinguishing between the qualifications of the Applicants. Specifically, each Applicant should endeavour to demonstrate, in its response to this Appendix B, how the experience of the Applicant, its Team Members and Key Individuals is relevant to the particular challenges and opportunities of this Project.
- (2) In evaluating each Applicant's Prequalification Submission, VIA Rail intends to score more favourably Prequalification Submissions which demonstrate how the Applicant's particular approach is relevant to the particular challenges and opportunities of the Project.
- (3) In selecting which projects to submit as examples to demonstrate experience, Applicants are strongly advised to submit experience in projects (for the Applicant, its Team Members and its Key Individuals) that are comparable to the Project. For the purposes of this RFQ Process, "comparable" experience is experience of a similar scale, size, complexity and scope of the Project.
- (4) With respect to project experience presented by Applicants, Applicants should clearly identify any limits on the scope of a project, or the work or services performed by the Applicant, a Team Member, or a Key Individual if such Applicant, Team Member or Key Individual was not responsible for the entire project, work or services described.
- (5) In selecting the proposed solution, Applicants are strongly advised that compliance of trainsets to Transport Canada (TC) and Federal Railroad Administration (FRA) structural requirements will be evaluated both at the RFQ and RFP stages. An Applicant may propose a solution requiring alternate compliance; however such solution may not be eligible to receive the maximum number of points allocated in the evaluation of the proposed solution. For clarity, an Applicant will not be disqualified, at either the RFQ or RFP stage, for proposing a solution that requires alternate compliance.

PART 2 SUBMISSION REQUIREMENTS, EVALUATION CRITERIA CATEGORIES AND EVALUATION CRITERIA

Table 1 – Financial Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria

Financial Submission Requirements		Evaluation Criteria	Maximum Pages	Maximum Points
1. APPLICANT FINANCIAL CAPACITY				
1.1	Financial Capacity			
	<p>(1) Except as otherwise indicated in this Section 1.1, the Applicant, each Team Member that will be responsible for the delivery of more than 20% of the value of the Fleet and Services, and each of their respective parent company guarantors (each a “Financial Disclosure Entity”) shall submit the following:</p> <p>(a) annual reports, which include audited financial statements (including an opinion letter or auditor’s report, balance sheet, income statement, statement of changes in cash flow, and notes) for each of the last three fiscal years;</p> <p>(b) interim financial statements for each quarter (or other interval for which interim statements are prepared) since the most recent fiscal year for which audited statements are provided, and if none have been prepared, a confirmation as such;</p> <p>(c) a copy of the most recent credit rating report (including credit warnings produced since the publication of said report) from each agency that rates the Financial Disclosure Entity’s debt, or confirmation that no such ratings exist;</p> <p>(d) using Form F-3 – Form of Guarantor Letter, as set out in Appendix F to the RFQ, a parent company guarantor letter for the Applicant and each Team Member, if applicable;</p>	<ul style="list-style-type: none"> The Applicant has provided all information requested in Section 1.1 of this Table 1. The Applicant has demonstrated sufficient financial capacity to deliver the Fleet and Services, and sufficient ability to meet the performance security requirements set out in the Commercial Terms Summary. 	N/A	Pass/Fail

Financial Submission Requirements	Evaluation Criteria	Maximum Pages	Maximum Points
<p>(e) using Form F-1– Form of Letter of Credit Commitment Letter, as set out in Appendix F to the RFQ, commitment letter(s) from one or more Canadian chartered banks listed in Schedule I, II, or III under the <i>Bank Act</i> (RSC 1985, c. B-1.01, as amended from time to time) or a credit union incorporated under the <i>Savings and Credit Unions Act</i> (RSQ, c. C-4, as amended from time to time), in all cases with a credit rating of A (or better) issued by Standard & Poor or of A2 (or better) issued by Moody’s (each, a “Financial Institution”), confirming the capacity of the Financial Disclosure Entities to obtain the MSA performance security for an amount of no less than C\$250,000,000;</p> <p>(f) using Form F-2 – Form of Certification Letter, as set out in Appendix F to the RFQ, a certification letter from the Chief Financial Officer or an authorized signing officer of the Financial Disclosure Entity; and</p> <p>(g) additional financial information, if any, that, in the Applicant’s view, will demonstrate to VIA Rail that the Financial Disclosure Entities have sufficient financial standing, capacity, and resources to carry out their respective roles in completing the Corridor Fleet Renewal Program. The Applicant shall include a description of the anticipated financial magnitude of each Financial Disclosure Entity’s respective role.</p> <p>For clarity, in the event that an Applicant is comprised of a prime contractor and subcontractors, the prime contractor and all subcontractors that will be responsible for the delivery of more than 20% of the value of the Fleet and Services are Financial Disclosure Entities. For further clarity, in the event that the Applicant is composed of a joint venture of multiple Team Members, each Team Member is a Financial Disclosure Entity.</p> <p>(2) Provide, for the Applicant and each Team Member that will be responsible for the delivery of more than 20% of the Fleet and Services evidence in the form of a written letter from its respective parent company guarantor that such parent company guarantor is willing to act as a guarantor in accordance with the requirements of the Corridor Fleet Renewal Program. If the Applicant or any applicable Team Member is itself a parent company, then the Applicant will not be required to submit information with respect to the parent company guarantor as set out in this Section 1.1(2).</p>			

Table 2 – Technical Submission Requirements, Evaluation Criteria Categories and Evaluation Criteria

Technical Submission Requirements		Evaluation Criteria	Maximum Pages	Maximum Points
2. APPLICANT EXPERIENCE				
2.1	Project Experience		20	75
	<p>(1) Using Form E-1 – Project Experience Form, as set out in Appendix E to the RFQ, provide a description of the Applicant’s design and manufacturing experience in providing bi-directional, inter-city trainsets with food service, including any fleets presently in revenue service, or on-order, for five projects. Each project description shall be with respect to a project that is comparable in size and scope to the Fleet and Services, and shall be with respect to projects that have been carried out during the ten years immediately prior to the RFQ Submission Deadline.</p> <p>(2) The Applicant should provide a written client reference letter for each project referenced in the Applicant’s response to Section 2.1(1) of this Table 2.</p>	<ul style="list-style-type: none"> The Applicant provided a sufficient number of project examples in the required timeframe to demonstrate that its design and manufacturing experience is comparable, in size and scope, to the requirements of the Fleet and Services. The Applicant’s demonstrated performance of delivery of trainsets will be evaluated based on the extent to which: <ul style="list-style-type: none"> a design schedule, qualification schedule and production and delivery schedule similar to the proposed schedules for the Fleet and Services were successfully achieved by the Applicant on previous projects using the same manufacturing facilities as proposed for the Project; the information provided supports the feasibility of the Applicant’s proposed design and delivery schedule for the Fleet and Services; and the narrative clearly explains the lessons learned from the previous projects, the improvements that were implemented from experience of previous projects. The written client reference letters for each project indicate that the Applicant delivered the project successfully and are consistent with the project experience information provided by the Applicant. 	25	25
				10
				10
				5

Technical Submission Requirements		Evaluation Criteria	Maximum Pages	Maximum Points
2.2	Organizational Structure		15	75
	<p>Provide a detailed, comprehensive organizational chart that,</p> <ul style="list-style-type: none"> (a) includes the names of all Team Members and Key Individuals, and, in the case of a joint venture, the employers of each of the Key Individuals; (b) clearly indicates the role that each Team Member and Key Individual is expected to have in the delivery of the Fleet and Services; (c) clearly indicates the proposed time commitment for each Team Member and Key Individual role and whether the individual will be working concurrently on other projects; (d) demonstrates the project management hierarchy for the delivery of the Fleet and Services. 	<ul style="list-style-type: none"> • The Applicant's organizational chart will be evaluated based on the extent to which: <ul style="list-style-type: none"> • the organizational chart demonstrates a feasible team structure; • the organizational chart demonstrates reasonable Team Member and Key Individual role and responsibility allocations; • the organizational chart indicates that the Applicant will be capable of delivering the Fleet and Services through a demonstrated ability to develop and maintain clear lines of accountability, allocation of appropriate staff time for each role, clarity and description of the roles, and time commitment; • the Key Individuals will be fully dedicated during the different phases of the Corridor Fleet Renewal Program; • the level of resources in each function depicted in the organizational chart is clearly defined for each phase of the Corridor Fleet Renewal Program and clearly describes how the Applicant will ensure the mobilization of the required team members; and • in the case of a joint venture or prime contractor with subcontractors, the extent to which the entities have demonstrated sufficient past experience collaborating with one another on other projects. Note that only Applicants that are not organized as a joint venture or prime contractor with subcontractors will receive maximum points for this criteria. 	15	15
				10
				15
				10
				15
				10

Technical Submission Requirements		Evaluation Criteria	Maximum Pages	Maximum Points
2.3	Key Individuals		3 pages per Key Individual	50
	<p>For each of the following Key Individuals, provide a general written description of the Key Individual’s project experience for three projects that have been carried out during the ten years immediately prior to the RFQ Submission Deadline using Form E-2 – Key Individual Form, as set out in Appendix E to the RFQ:</p> <ul style="list-style-type: none"> (a) Contractor Representative (b) Project Manager; (c) Design Manager; (d) Engineering Manager; (e) Systems Integrator; (f) Production Manager; and (g) Quality Assurance Manager. <p>For clarity, projects do not need to have been completed prior to the RFQ Submission Deadline however Applicants should be able to demonstrate that the Key Individual has requisite experience in all phases of delivery.</p>	<ul style="list-style-type: none"> • The Applicant’s Key Individuals will be evaluated based on the extent to which: <ul style="list-style-type: none"> • the Key Individuals proposed by the Applicant have the requisite experience and qualifications to successfully perform their respective functions in the delivery of the Fleet and Services; • the Applicant’s Key Individuals and team have relevant experience on projects of a similar size and scope as the Corridor Fleet Renewal Program; and • the Applicant’s proposed Key Individuals have a level of experience that exceeds the average experience level of the Applicant’s organization. 		<p>25</p> <p>20</p> <p>5</p>

Technical Submission Requirements	Evaluation Criteria	Maximum Pages	Maximum Points
3. PROPOSED SOLUTION			
3.1	Proposed Solution	35	450
	<p>Provide a description of the Applicant's proposed trainset to meet the requirements of the Corridor Fleet Renewal Program.</p> <ul style="list-style-type: none"> • The Applicant's proposed solution will be evaluated based on the extent to which: <ul style="list-style-type: none"> • the trainset exterior arrangements have been clearly depicted and the associated narrative clearly describes how the proposed trainset will meet the "corridor infrastructure interface" and requirements having specific regard to: rail interface, clearance envelope and platform heights; • the trainset complies with all Transport Canada and U.S. Federal Railroad Administration requirements; • the trainset interior arrangements have been clearly depicted and the associated narrative clearly describes how the proposed trainset provides or exceeds all the required passenger amenities, accommodates universal accessibility, and offers or exceeds the required level of service for all passengers and train crews; • the proposed design is service proven in similar operating conditions and the level of adaptation or re-design required to meet the requirements of the Corridor Fleet Renewal Program is minimal; • the trainset is design proven to be bi-directional; • the trainset can operate at 100 mph on Transport Canada Class 5 tracks, at 110 mph on FRA Class 6 tracks and at 125 mph on FRA Class 7 tracks; • the long and extra long trainset can operate at 125 mph in diesel mode and in electric mode; and • the simplicity in design of the Applicant's approach to convert the diesel trainset into a dual mode trainset (diesel and 25kV) and the ease with which the conversion will be carried out. • A proposed solution that is not bi-directional or that cannot operate at 100 mph will receive 0 for this Section 3.1. 	50	75
		75	75
		75	75
		25	25
		50	50
		25	25

Technical Submission Requirements		Evaluation Criteria	Maximum Pages	Maximum Points
4. DELIVERABILITY				
4.1	Master Schedule		15	200
	Provide a proposed master schedule using the critical path method and a written narrative which clearly illustrates the Applicant's intended progression of the Fleet and Services based on the approximate commercial close target date set out in the RFQ Data Sheet.	<ul style="list-style-type: none"> The Applicant's proposed master schedule will be evaluated based on the extent to which: <ul style="list-style-type: none"> all milestone activities described in the Commercial Terms Summary have been incorporated into the proposed master schedule and clearly described in the Applicant's narrative; the critical path is clearly described, including adequate "float" time, in the proposed master schedule and narrative and the Applicant is able to describe lessons learned and best practices incorporated into the master schedule in relation to "float" time and the critical path; a logical timeframe for the production and delivery of the trainsets and ancillary equipment is set out in the master schedule and the narrative clearly explains how the delivery of ancillary equipment has been considered to ensure the successful transition of this new fleet into revenue service; the first trainset will be available for winter corridor testing in or before October 2021; and the first trainset will be available to begin revenue service at or before the end of second quarter of 2022 and the last trainset will be accepted in or before 2024. 		<p>25</p> <p>25</p> <p>25</p> <p>50</p> <p>75</p>

Technical Submission Requirements		Evaluation Criteria	Maximum Pages	Maximum Points
4.2	Manufacturing Capability		15	150
	<p>Provide a comprehensive written description of the Applicant's manufacturing capability proposed for the Corridor Fleet Renewal Program, including a description of:</p> <ul style="list-style-type: none"> (a) the location of the Applicant's manufacturing facilities and test facilities; (b) the planned location of the Applicant's Key Individuals and Team Members; (c) the current workload and backlog, and the projected workload and backlog based on demand at the manufacturing facilities and test facilities; and (d) the level of resources (both with respect to equipment and workforce) and maximum capacity at the manufacturing facilities and test facilities. 	<ul style="list-style-type: none"> • The Applicant's proposed manufacturing capability to meet the delivery schedule for the Corridor Fleet Renewal Program will be evaluated based on: <ul style="list-style-type: none"> • the quality, proximity, and level of integration among manufacturing facilities and test facilities; • the current and planned workload and the level of resources compared to maximum capacity at the manufacturing facilities and test facilities; • the number of new manufacturing and testing installations required to properly deliver the Corridor Fleet Renewal Program; and • the proximity of the manufacturing and testing facilities to the rest of the Applicant's Team Members and Key Individuals. 		<p>35</p> <p>60</p> <p>25</p> <p>30</p>

APPENDIX C TO THE RFQ – PREQUALIFICATION SUBMISSION FORMS
FORM C-1 – MASTER SUBMISSION FORM

Name of Applicant: _____

Name of Applicant
Representative: _____

Address: _____

City/Province/Postal Code: _____

Applicant Representative
Contact Individual(s): _____

Title: _____

Email: _____

Telephone: _____

Alternate Telephone: _____

The above named Applicant Representative hereby declares on its own behalf and, for clarity, on behalf of all Team Members that:

- (a) it has the power and authority to bind the Applicant for the purpose of the RFQ;
- (b) it acknowledges that all terms not otherwise defined herein shall have the meaning given to them in the RFQ Documents;
- (c) the Applicant agrees to comply with and be bound by the requirements, terms and conditions contained in the RFQ Documents;
- (d) the Applicant acknowledges its obligations regarding Confidential Information contained in Section 7.12 of the RFQ and agrees to be, and to use reasonable efforts to cause its Representatives, potential Team Members and Team Members to be bound by such terms, irrespective of whether the Applicant, potential Team Members or Team Members submit a Prequalification Submission in the RFQ Process or are invited to submit or submit a proposal in the subsequent RFP Process for the Project;
- (e) the information submitted in the Prequalification Submission or otherwise related to the RFQ Documents is accurate;
- (f) the information required by the RFQ Documents has been provided in the Prequalification Submission;
- (g) the Applicant recognizes that the information submitted will be treated as confidential and will be used only to establish a list of Shortlisted Applicants based on the RFQ;
- (h) the Applicant agrees that the information submitted may be clarified, verified and investigated by VIA Rail and that pertinent information may be obtained and hereby consents to such clarification, verification and investigation;
- (i) the Applicant consents to VIA Rail performing reference checks in accordance with the RFQ;
- (j) the Applicant agrees that VIA Rail is not obliged, in any way whatsoever, to carry out further clarifications, verifications or investigations of any Prequalification Submission;
- (k) the Applicant understands that any omission or failure to substantially complete the Prequalification Submission or failure to substantially comply with a requirement included in the RFQ Documents may result in the Applicant being disqualified;
- (l) the Applicant understands that it must submit a substantially complete Prequalification Submission in accordance with the RFQ Documents and a failure to do so may result in disqualification of the Applicant;
- (m) the Applicant understands that the RFQ is not an offer to enter into any contract of any kind whatsoever and is not intended to create a bidding contract (often referred to as "Contract A");
- (n) the Applicant understands that the RFQ does not constitute any offer of work by VIA Rail;
- (o) the Applicant represents and warrants to VIA Rail that the Applicant,
 - (i) has the sole and unrestricted right, title and interest or good and sufficient power, authority and right to use any intellectual property that the Applicant requires for performance of its obligations pursuant to this RFQ; and

- (ii) will pay all applicable fees associated with the use of such intellectual property including any required license fees and royalties;
- (p) the Applicant acknowledges Section 7.5(1)(a) of the RFQ and understands that the Applicant may be disqualified if the Applicant or any Team Member has been convicted of carrying out inappropriate bidding or procurement practices or engaging in unethical behaviour in relation to a public sector procurement process in Canada;
- (q) the Applicant confirms that the Applicant and each Team Member has conducted itself with integrity and propriety and has not engaged in any inappropriate bidding practices or unethical behaviour in the course of this RFQ Process, and there are no charges or investigations by a public body or convictions related to inappropriate bidding practices or unethical behaviour by the Applicant or any Team Member in relation to a public sector tender or procurement in any Canadian jurisdiction that:
 - (i) are related to the Project;
 - (ii) may compromise the reputation or integrity of VIA Rail so as to affect public confidence in the Project; or
 - (iii) would contravene any Applicable Law or could have a material adverse effect on the Applicant or any Team Member in a way which could impair the Applicant or any Team Member's ability to perform its obligations under the Project Agreement; and
- (r) this Form C-1 – Master Submission Form has not been modified in any manner, except to include the Applicant's required information.

In witness whereof, the Applicant Representative has executed this Form C-1 – Master Submission Form as of the date indicated below.

Date: _____

Applicant Representative

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Applicant Representative and to bind the Applicant and each Team Member.

APPENDIX C TO THE RFQ – PREQUALIFICATION SUBMISSION FORMS
FORM C-2- CONSENT DECLARATION

Team Member Consent Declaration

I, _____, am an authorized officer or director of _____ (“Team Member”) and confirm for and on behalf of the Team Member and without any personal liability that:

- (a) the Team Member has read and understands the RFQ Documents and acknowledges that all terms not otherwise defined herein shall have the meaning given to them in the RFQ Documents;
- (b) the Team Member agrees to be bound by the requirements of the RFQ Documents;
- (c) the Team Member consents to its inclusion as a member of the Applicant;
- (d) the Team Member confirms that the Prequalification Submission accurately reflects the qualifications of the Team Member;
- (e) the Team Member consents to VIA Rail performing reference checks in accordance with the RFQ;
- (f) the Team Member understands and accepts the obligations imposed on it as a result of the Prequalification Submission; and
- (g) declares that this Form C-2 – Consent Declaration has not been modified in any manner, except to complete the required information.

In witness whereof, the Team Member has executed this Form C-2 – Consent Declaration as of the date indicated below.

Date _____

Team Member

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Team Member.

APPENDIX C TO THE RFQ – PREQUALIFICATION SUBMISSION FORMS
FORM C-3 - CONFLICT OF INTEREST, CONFIDENTIAL INFORMATION AND LITIGATION
DECLARATION

NOTE TO APPLICANTS: Notwithstanding the submission of this Declaration, Conflicts of Interest must be disclosed to the Contact Person as soon as one is discovered by the Applicant or an Applicant Team Member.

This Form C-3 - Conflict of Interest, Confidential Information and Litigation Declaration is delivered pursuant to the RFQ. All terms not otherwise defined herein have the meaning given to them in the RFQ.

Notwithstanding the existence of and/or submission of this Declaration, the Applicant hereby acknowledges RFQ Section 7.10 and the Applicant's obligation to continue to declare all Conflicts of Interest as soon as one is discovered and is under a continuing obligation to disclose all Conflicts of Interest that exist or may exist in the future.

The Applicant Representative hereby declares on behalf of the Applicant, the Team Members and the Key Individuals that:

1. There is not, nor was there any, perceived, potential or actual Conflict of Interest or any other type of unfair advantage in our submitting the Prequalification Submission. True Not True

If the answer to the above statement is "Not True", attach, on a separate page, a list and explanation of situations, each of which may be a Conflict of Interest or an instance of unfair advantage, or which may appear as a potential Conflict of Interest or unfair advantage in the Applicant submitting the Prequalification Submission

2. We have no knowledge of or the ability to avail ourselves of Confidential Information (other than Confidential Information, which may have been disclosed by VIA Rail to the Applicants in the normal course of the RFQ) that is or was relevant to the Project or the RFQ evaluation process. True Not True

If the answer to the above statement is "Not True", attach, on a separate page, a brief explanation.

3. Neither the Applicant, the Team Members, nor any Key Individual is the subject of any adverse ruling or conviction determined in the last 5 years involving fraud, fraudulent misrepresentation or professional misconduct. True Not True

If the answer to the above statement is "Not True", attach, on a separate page, a brief explanation.

4. Neither the Applicant, the Team Members nor any Key Individual is involved in any litigation that is currently ongoing, either directly or indirectly (e.g. through a related party) that:
- a) is against or involving VIA Rail; or True Not True
- b) may materially adversely affect the Applicant's, the Team Member's or the Key Individual's ability to participate in the Project. True Not True

If the answer to any of the above statements is "Not True", attach, on a separate page, a brief explanation and include the following information: (1) plaintiff name; (2) defendant name; (3) year litigation initiated; (4) disputed amount (\$CAD) and (5) nature of dispute.

6. This Form C-3 - Conflict of Interest, Confidential Information & Litigation Declaration has not been modified in any manner, except to complete the required information.

7. Full disclosure of the requirements set out in the RFQ has been made.

In witness whereof, the Applicant Representative has executed this Form C-3 - Conflict of Interest, Confidential Information & Litigation Declaration as of the date indicated below.

Date: _____

Applicant Representative

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the Applicant Representative and to bind the Applicant and each Applicant Team Member.

APPENDIX D TO THE RFQ – REQUEST FOR INFORMATION FORM

NOTE TO APPLICANTS: Applicants must use this Appendix D form to submit RFIs in accordance with the requirements set out in Section 3.6 of the RFQ.

To Be Completed by the Applicant:			
Submitted By:	[Insert Applicant Name]		
Date Submitted:	[Insert Date]		
Do you want this request for information to be “commercially confidential” in accordance with Section 3.6(4) of the RFQ?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Source of Query:			
Reference Document:	[Indicate section reference and date, if applicable]		
Request/Query: (One request/query per sheet)			

APPENDIX E TO THE RFQ – PROJECT EXPERIENCE FORMS

NOTE TO APPLICANTS: Applicants are strongly cautioned to review Appendix B to the RFQ prior to filling out this Form E-1.

FORM E-1 –PROJECT EXPERIENCE FORM

Project name and name of client:	
Location (City, Province/State, Country):	
Date completed or status of project:	
Project delivery type/procurement model:	
Project description, including quantity and type of trainset, scope of services, and any challenges and opportunities presented by the project:	
Proposed delivery schedule (design, qualification, delivery):	
Actual delivery schedule (design, qualification, delivery):	
Project completion date:	
Contract value (in Canadian dollars):	
Description of how the project is comparable to VIA Rail Corridor Fleet Renewal Program:	
Client contact information including client name, contact name, title, location, phone number and e-mail address:	
Any further information, including lessons learned from the project and improvements implemented from experience of previous projects.	

FORM E-2– KEY INDIVIDUAL FORM

NOTE TO APPLICANTS: Applicants are strongly cautioned to review Appendix B to the RFQ prior to filling out this Form E-2.

Employer:	
Key Individual's role(s) and responsibilities in this Project, including whether the Key Individual is responsible for one or more of the following Project components: (i) project management; (ii) design management; (iii) engineering management; (iv) maintenance management; (v) integration management; and (vi) safety management.	
Key Individual's years of relevant experience:	
Key Individual's formal schooling (degree or diploma obtained, year and country/province obtained in):	
Key Individual's professional engineering or technical accreditation and current country/province of accreditation:	
Description of the Key Individual's availability for the Corridor Fleet Renewal Program:	
Project #1	
Selected past project(s) name(s) and description(s):	
Role of Key Individual on past project(s):	
Specific experience on past project(s) relevant to the nature and scope of the Corridor Fleet Renewal Program (including overall experience, as well as project management, as applicable):	
Client reference (client name, contact name, phone, e-mail) for each past project:	

Project #2	
Selected past project(s) name(s) and description(s):	
Role of Key Individual on past project(s):	
Specific experience on past project(s) relevant to the nature and scope of the Corridor Fleet Renewal Program (including overall experience, as well as project management, as applicable):	
Client reference (client name, contact name, phone, e-mail) for each past project:	
Project #3	
Selected past project(s) name(s) and description(s):	
Role of Key Individual on past project(s):	
Specific experience on past project(s) relevant to the nature and scope of the Corridor Fleet Renewal Program (including overall experience, as well as project management, as applicable):	
Client reference (client name, contact name, phone, e-mail) for each past project:	

APPENDIX F TO THE RFQ – FINANCIAL SUBMISSION FORMS

NOTE TO APPLICANTS: Applicants are strongly cautioned to review Appendix B to the RFQ prior to filling out Form F-1 and F-2.

FORM F-1 FORM OF LETTER OF CREDIT COMMITMENT LETTER

[Note to Applicants: To be prepared on Financial Institution’s letterhead]

[Insert date]

VIA Rail Canada Inc.
3, Place Ville-Marie
Bureau 500
Montréal, Québec H3B 2C9
Attention: Marc James, Senior Specialist, Procurement

Re: Request for Qualification for the Corridor Fleet Renewal Program issued April 3, 2018 (the “RFQ”)

As part of the Prequalification Submission submitted by **[Applicant’s name]**, (“Applicant”) we, **[Name of Financial Institution]** are issuing this letter to confirm that we deem that the Applicant is capable of obtaining the letter of credit required as part of the RFQ in the amount of \$250 million.

We have reviewed the RFQ Documents including the requirements specified in Appendix B to the RFQ.

If the Applicant is selected as a Shortlisted Applicant, we confirm that we shall issue a letter of credit as the MSA performance security.

Once issued, the letter of credit shall be irrevocable and in favour of VIA Rail.

VIA Rail will be allowed to present a written request for payment at any **[Name of Financial Institution]** branch located in Montréal or Toronto, Canada, on or before the close of business on the expiry date of the letter of credit. Drawings shall be made in monies only. We shall honour, without inquiring whether VIA Rail has a right, as part of its agreement with the Applicant, to make such draw and without acknowledging any claim of the Applicant.

All banking charges shall be payable by the Applicant.

No event impacting the Applicant, including but not limited to bankruptcy, insolvency, winding-up, shall have any impact on the terms and validity of the letter of credit.

The letter of credit will automatically be renewed yearly unless, at least 30 days prior to any expiration date, we notify you, in writing, that we will not renew the letter of credit for an additional year.

The letter of credit shall be subject to International Chamber of Commerce Uniform Customs and Practice for Documentary Credits 2007 Revision, Publication No. 600.

We are not aware of any condition which could restrict our ability to issue the required letter of credit by the effective date of the MSA.

All capitalized terms not defined in this letter are defined in the RFQ.

Yours truly,

[Name of Financial Institution]

Signature: _____

Name of authorized signatory: _____

Date: _____

FORM F-2 FORM OF CERTIFICATION LETTER

[Note to Applicants: To be prepared on Team Member's letterhead]

[Insert date]

VIA Rail Canada Inc.

3, Place Ville-Marie

Bureau 500

Montréal, Québec H3B 2C9

Attention: Marc James, Senior Specialist, Procurement

Re: Request for Qualification for the Corridor Fleet Renewal Program issued April 3, 2018 (the "RFQ")

I, **[name of the authorized signing officer]**, acting as **[role occupied by the authorized signing officer]**, certify that the information provided by **[Team Member's name]** (the "Team Member") in accordance with Section 1.1 of Table 1 of Appendix B to the RFQ is complete and accurate. Also, I confirm that I am well informed of the Team Member's financial situation, including off-balance sheet financial arrangements, litigations matters, material events that have affected or which could affect the Team Member.

- (1) Attached to this letter is a detailed listing all of the material off-balance sheet financial arrangement which the Team Member has entered into as of the RFQ Submission Deadline which are not disclosed in the most recent financial statements provided as part of the Prequalification Submission.

[OR]

- (1) I am unaware of any material off-balance sheet financial arrangement which the Team Member has entered into as of the RFQ Submission Deadline which are not disclosed in the most recent financial statements provided as part of the Prequalification Submission.

- (2) Attached to this letter is a detailed listing all of the material claims, litigation or proceedings which the Team Member is involved in as of the RFQ Submission Deadline which are not disclosed in the most recent financial statements provided as part of the Prequalification Submission.

[OR]

- (2) I am unaware of any material claims, litigation or proceedings which the Team Member is involved in as of the RFQ Submission Deadline which are not disclosed in the most recent financial statements provided as part of the Prequalification Submission.

- (3) Attached to this letter is a detailed listing all of the material events that have affected, currently affect, or may affect the Team Member's financial standing since the last annual or interim financial statement provided and anticipated for the next reporting period as of the RFQ Submission Deadline. As part of the attached listing, I have described how those material events have been, are and will be addressed by the Team Member.

[OR]

- (3) I am unaware of any material changes that are not disclosed in the information provided as of the date of this Prequalification Submission.

- (4) Attached to this letter is a descriptions of any anticipated future change in ownership or financing structures or organization, or any renewals or refinancing of existing material financing source or credit facilities, or any potentially restrictive existing banking covenants and any other pertinent information to adequately evidence the Team Member's capacity to fulfil the Corridor Fleet Renewal Program.

[OR]

- (4) I am unaware of any material changes that are not disclosed in the information provided as of the date of this Prequalification Submission.

I confirm that the Team Member and its parent company guarantor, are eligible to receive a letter of credit, issued by a Financial Institution, for an amount of no less than \$250 million.

All capitalized terms not defined in this letter are defined in the RFQ.

Yours truly,

Signature: _____

Name of authorized signing officer: _____

Position of the authorized signing officer: _____

Date: _____

FORM F-3 FORM OF GUARANTOR LETTER

[Note to Applicants: To be prepared on Parent Company Guarantor’s letterhead]

[Insert Date]

VIA Rail Canada Inc.

3, Place Ville-Marie

Bureau 500

Montréal, Québec H3B 2C9

Attention: Marc James, Senior Specialist, Procurement

Re: Request for Qualifications for the Corridor Fleet Renewal Program issued April 3, 2018 (the “RFQ”)

As part of the Prequalification Submission submitted by **[Applicant’s name]**, (“Applicant”) we, **[Name of parent company guarantor]**, are issuing this letter confirming that we are willing to act as parent company guarantor for the **[Name of Applicant Team Member]**. As such, if the Applicant is selected as the Successful Proponent, we shall guarantee the performance of all of **[name of Applicant Team Member]**’s obligations under the Contract Documents as set out in the RFQ.

All capitalized terms not defined in this letter are defined in the RFQ.

Yours truly,

[Name of Parent Company Guarantor]

Signature: _____

Name of authorized signatory: _____

Date: _____

APPENDIX G TO THE RFQ – FORM OF CONFIDENTIALITY AGREEMENT

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement is made as of the _____ day of _____, 2018 (the “**Agreement**”)

BETWEEN:

VIA Rail Canada Inc.

-and-

[Insert Name of Applicant] _____ (the “**Recipient**”)

WHEREAS VIA Rail is conducting a request for qualifications process for its Corridor Fleet Renewal Program (the “**RFQ Process**”); and

WHEREAS VIA Rail and its advisors, consultants and other third parties that are involved in the RFQ Process (the “**VIA Rail Parties**”) propose to disclose or provide access to Confidential Information (defined herein) to the Recipient for the purposes of the Recipient participating in the RFQ Process as the Recipient has expressed an interest to VIA Rail in participating in the RFQ Process.

THEREFORE in consideration of the mutual covenants and agreements of the parties hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the Recipient agrees as follows:

1. **Confidential Information.** For the purposes of this Agreement, “**Confidential Information**” means all information not in the public domain, including, but not limited to, computer aided drafting and designs, drawings, photographs, surveys, property layouts, property blueprints, product designs, prototypes, specification, maintenance, procedures, technical, product and marketing materials and information, secrets, processes, data and know how, improvements, inventions, techniques, marketing plans, strategies, forecast and customer list, disclosed or submitted, orally, in writing, or by any other media to the Recipient by VIA Rail or a VIA Rail Party, but shall exclude the information referred to in Section 8. For clarity, Confidential Information includes any draft commercial and technical documents related to the Corridor Fleet Renewal Program, and all information exchanged pursuant to the RFQ Process, including all other information connected, directly or indirectly, to the RFQ Process or the Corridor Fleet Renewal Program. For further clarity, Confidential Information shall not include the RFQ Documents. For clarity, nothing in this Agreement shall require VIA Rail to disclose any of their information.

2. **Recipient’s Obligations.** The Recipient acknowledges and agrees that,

- (a) the Recipient may disclose any of the Confidential Information only to its advisors, consultants and employees of the Recipient involved in the RFQ Process (the “**Recipient Parties**”) who need to know such Confidential Information for the purpose of preparing the Recipient’s submission in the RFQ Process. The Recipient shall inform any Recipient Party to whom it discloses Confidential Information of the confidential nature of such Confidential Information and cause each of the Recipient Parties to treat such Confidential Information confidentially in accordance with this Agreement and not disclose such Confidential Information except as permitted herein;
- (b) the Confidential Information shall be considered confidential and proprietary to VIA Rail and the Recipient Parties shall hold the same in confidence and shall not use the Confidential Information other than for the purposes of the Recipient’s participating in the RFQ Process;
- (c) neither the Recipient nor any Recipient Parties shall disclose, publish, sell, assign, transfer or otherwise reveal any of the Confidential Information received from the VIA Rail Parties, or any information or materials derived therefrom, to any other person whatsoever except with the specific prior written authorization of VIA Rail;

- (d) the Recipient shall employ at least the same standard of care to protect the secrecy and confidentiality of the Confidential Information as it uses to protect its own confidential and proprietary information and materials, but in no event shall the Recipient employ less than reasonable care in protecting the secrecy and confidentiality of the Confidential Information. In particular, the Recipient shall keep all Confidential Information in a secure environment and protected from unauthorized use, reproduction or access. In the event the Recipient become aware of any unauthorized access to the Confidential Information, it shall immediately notify VIA Rail in writing as to the nature and scope of the unauthorized access as well as any unauthorized use or disclosure of such Confidential Information;
- (e) the Recipient shall be responsible for any breach of this Agreement by any of the Recipient Parties. The Recipient shall take all reasonable measures, including, without limitation, court proceedings, at the Recipient's sole expense, to restrain the Recipient Parties from making unauthorized disclosure or use of the Confidential Information;
- (f) the Recipient Parties shall not remove any copyright, trademark or other proprietary rights legend from any form of Confidential Information;
- (g) title to all Confidential Information and any copies thereof shall remain in VIA Rail;
- (h) Confidential Information furnished in tangible form shall not be duplicated by the Recipient except in accordance with this Agreement. Within ten business days of any written request of VIA Rail to the Recipient for the Recipient to return or destroy all Confidential Information in the Recipient or a Respondent Party's possession, the Recipient will take all reasonable measures to collect and return to VIA Rail, without retaining copies thereof, all tangible embodiments of the Confidential Information, in whatever form furnished by VIA Rail under this Agreement, and will immediately take all reasonable measures to ensure the return or destruction of all notes, summaries, work papers or analyses containing or incorporating the Confidential Information to the extent and as permitted by applicable laws, regulations and the professional standards of the Recipient's accountants, provided that the Recipient may retain Recipient's internal memoranda as required by its internal policies. The parties agree that it shall be at VIA Rail's discretion whether to return or destroy documents in accordance with this Section 2(h). Following such return or destruction, the Recipient shall provide VIA Rail with a written certification signed by the Recipient that such return or destruction, as the case may be, has taken place in accordance with this Section 2(h). The Recipient agrees that any internal memoranda retained by the Recipient pursuant to this Section 2(h) will remain subject to the confidentiality obligations contained in this Agreement for the full term of this Agreement;
- (i) if disclosure by the Recipient or a Recipient Party of Confidential Information is required pursuant to a legal requirement imposed by any court of competent jurisdiction or by any administrative body having jurisdiction, unless prohibited by law, prior to any such disclosure, the Recipient or Recipient Party, as applicable, shall first provide VIA Rail prompt written notice of any such proposed disclosure so that VIA Rail has an opportunity to,
- (i) seek an appropriate protection order, appear before any such court or administrative body to oppose such disclosure, or pursue such other action, remedy or assurance necessary to preserve the confidentiality of the Confidential Information; and/or
 - (ii) waive compliance with any of the provisions in this Agreement.

The Recipient and each Recipient Party shall fully co-operate with and shall not oppose VIA Rail in respect of the matters set out in this Section 2(i). If, in the absence of either a protective order or a waiver by VIA Rail, the Recipient or the Recipient Party, in the reasonable opinion of reputable legal counsel, is required by law to disclose any Confidential Information, or to stand liable for contempt or to suffer other censure or penalty on any failure to so disclose, the Recipient or the Recipient Party may, without liability hereunder, disclose that portion, and only that portion, of the Confidential Information that the Recipient or Recipient Party is required by law to disclose; and

- (j) in the event of a breach of any of the provisions set out in this Agreement, the harm suffered by VIA Rail would not be compensable by monetary damages alone and accordingly, that VIA Rail shall, in

addition to other available legal remedies, be entitled to interim or injunctive relief against such breach.

3. **No Representations or Warranties.** The Recipient acknowledges and agrees that VIA Rail does not make any representations or warranties with respect to the accuracy of the Confidential Information and the Recipient accepts all responsibility for verifying the accuracy and completeness of any Confidential Information supplied by VIA Rail, and accepts all responsibility associated with the misuse, misinterpretation or misapplication of the Confidential Information, or any part thereof.
4. **Indemnification.** The Recipient agrees to indemnify and hold VIA Rail harmless from any misuse, misinterpretation or misapplication of the Confidential Information, or any part thereof, by the Recipient or any Recipient Party as well as any claims, proceedings, damages and liabilities arising out of the Recipient Parties' failure to comply with the terms and conditions of this Agreement.
5. **Term.** The obligations of the Recipient herein shall be effective from the date of this Agreement and for two years from the date VIA Rail last discloses any Confidential Information to the Recipient or a Recipient Party pursuant to this Agreement.
6. **Notices.** Any notice required or permitted to be provided under this Agreement shall be provided by sending the same by registered mail, courier or by hand, as follows:

If to VIA Rail:
Marc James
Senior Specialist, Procurement
VIA Rail Canada Inc.
3 Place Ville-Marie, Suite 500
Montréal, Québec H3B 2C9

If to the Recipient:
Address: _____
Attention: _____

Any notice provided by hand or courier shall be deemed to have been validly and effectively delivered upon receipt. Any notice provided by registered mail shall be deemed to have been validly and effectively delivered on the third business day following the date of mailing.

7. **Further Assurances.** The Recipient acknowledges that further confidentiality covenants satisfactory to VIA Rail may be required from the Recipient prior to the provision of further Confidential Information and the Recipient agrees to consider such covenants in good faith but makes no commitment to be bound by any such covenants and any such commitment will be included in a further written agreement to that effect. For greater clarity, should the Recipient not agree to be bound by further confidentiality covenants requested by VIA Rail, VIA Rail will not be required to disclose to the Recipient any further Confidential Information.
8. **Other Information.** The Recipient shall have no obligation under this Agreement with respect to,
- (a) information which is or becomes publicly available without breach of this Agreement by the Recipient or a Recipient Party;
 - (b) is rightfully received by the Recipient without obligations of confidentiality; or
 - (c) is independently developed by the Recipient without breach of this Agreement, provided that the Recipient can show that such development was accomplished without the use of or any reference to the Confidential Information.
9. **No License.** Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information.

10. **No Publicity.** Subject to Section 2, the Recipient agrees not to disclose its participation in the RFQ Process or the existence or terms and conditions of the Agreement, without the specific prior written authorization of VIA Rail.
11. **Access to Information.** No information, records or documents containing personal information will be provided to the Recipient pursuant to this Agreement. The Recipient acknowledges that VIA Rail is bound by the *Access to Information Act* (Canada) (“AIA”). If a request is made under AIA for access to information or records provided by VIA Rail to the Recipient, the Recipient shall cooperate with VIA Rail in identifying records responsive to the request and responding to it in a timely manner. For greater clarity, VIA Rail, in its sole discretion, shall determine the financial, commercial, scientific or technical confidential information which is to be redacted from the records that are to be disclosed under the applicable privacy legislation.
12. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of Quebec and the laws of Canada applicable therein. Both parties consent to the exclusive jurisdiction of the Quebec courts for any dispute arising out of this Agreement. Both parties agree that in the event of any breach or threatened breach by the other party it may obtain, in addition to any other legal remedies which may be available, such interim or injunctive relief as may be necessary to protect it against any such breach or threatened breach.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and terminates and supersedes all prior agreements, understandings or agreements on the subject matter hereof.
14. **Amendment.** This Agreement may only be modified or amended by written agreement of both parties.
15. **Non-Assignment.** The Recipient may not assign this Agreement or any interest herein without VIA Rail’s express prior written consent.
16. **Severability.** If any term of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions of this Agreement, and this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid, illegal or unenforceable term had never been included.
17. **No Implied Waiver.** No term or condition of this Agreement may be waived, except by written consent of both parties. Either party’s failure or delay to exercise any right, power or privilege hereunder shall not be construed as a waiver of any continuing or subsequent failure to perform or the delay in the performance of any term hereunder.
18. **Cumulative Remedies.** The rights, powers and remedies of each party set forth in this Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such party under this Agreement or as provided at law or in equity.
19. **Counterparts.**
- (a) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.
 - (b) The parties hereto may execute the counterparts in original, faxed or electronic form and the parties adopt any signatures received by a receiving fax machine or other form of electronic transmission as original signatures of the parties but any party providing its signature by fax or other form of electronic transmission shall promptly forward to the other party an original of the signed copy of this Agreement.
20. **Language.** The Recipient has expressly requested that this Agreement, all documents relating to the RFQ Process and, if the Recipient is shortlisted at the end of the RFQ Process, all documents relating to the request for proposals process (including the contracts that could be entered into at the end of the process), be drafted in English only. Le soussigné a demandé spécifiquement que la présente convention, tous les documents reliés au processus de qualification et, si le soussigné est préqualifié à l’issue du processus de qualification, tous les documents reliés au processus de demande de propositions (incluant les contrats qui pourraient être conclus à l’issue du processus) soient rédigés en anglais seulement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

VIA RAIL CANADA INC.

Per: _____

Name:

Title:

I have the authority to bind the corporation.

[APPLICANT] _____

Per: _____

Name:

Title:

I/We have the authority to bind the corporation.

23317693.14