



**Progressive Public Private Partnership for  
The Trillium Health Partners M-Site Redevelopment  
P3 DBFM Project**

**REQUEST FOR PROPOSALS**

**RFP #21-350**

**(RFP VERSION 1.0)**

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## REQUEST FOR PROPOSALS

### SECTION 1 – INTRODUCTION

#### 1.1 General

(1) This Request for Proposals (“**RFP**”) is issued by Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**”, also known as “**OILC**” or “**IO**”) or any successor thereto, in conjunction with the client identified in the RFP Data Sheet (sometimes referred to as the “**Client**”). Infrastructure Ontario and the Client are collectively referred to as the “**Sponsors**” for the purposes of this RFP.

(2) In this RFP, proponents that submit documents in response to this RFP are referred to as “**Proponents**”. The Technical Submissions and Financial Submissions of the Phase 2 Proponents are referred to as “**Proposals**”. The entity that is selected by the Sponsors to enter into the Development Phase Agreement is referred to as the “**Preferred Proponent**”. For convenience, the general use of the term “Proponents” in this RFP includes the Phase 1 Proponents, the Phase 2 Proponents or both of them, as the context requires.

(3) Except as provided in RFP Section 1.1(3)(a), the procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on DPA Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) whichever is first (the “**RFP Process**”). Only Phase 2 Proponents that submit a Proposal in accordance with this RFP will acquire any rights under the RFP. Except as provided in RFP Sections 3.8.2 and 3.8.3 and except for the Sponsors’ obligation to pay a Proposal Fee, all rights and obligations arising out of the RFP (the bidding contract or “**Contract A**”) terminate either on the cancellation of this RFP Process by the Sponsors, if such cancellation occurs, or

- (a) for the Preferred Proponent, on DPA Close (provided that DPA Close is reached prior to the expiration of the Proposal Validity Period, or extended Proposal Validity Period, if applicable); and
- (b) for the Phase 2 Proponents that are not the Preferred Proponent, on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or DPA Close, whichever occurs first.

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

(5) The Project to which this RFP applies has been approved to proceed as a public private partnership. There are five fundamental principles for the procurement of public infrastructure projects in Ontario, including the Project, as follows:

- (a) the public interest is paramount;
- (b) value for the investment of public money must be demonstrated;

- (c) appropriate public control and ownership must be maintained;
- (d) accountability must be maintained; and
- (e) fair, transparent and efficient processes must be used.

(6) A brief description of the project that is the subject of this RFP (the “**Project**”) is set out in the RFP Data Sheet. A detailed description of the Project is contained in the documentation in each Data Room.

(7) While Infrastructure Ontario will manage the procurement process in respect of the Project, the Preferred Proponent, subject to the requirements and conditions of the RFP Documents, will actually enter into the Development Phase Agreement with Infrastructure Ontario and any other party or parties named as the signing party or parties in the RFP Data Sheet (the “**Signing Parties**”). The RFP Data Sheet further sets out any restrictions that apply in respect of the identity of the Signing Parties.

## **1.2 Overview of the Stages of Project Procurement and Implementation**

(1) The Sponsors will carry out the procurement and implementation of the Project in accordance with the following stages:

- (a) Stage 1 – RFP Procurement Process

The RFP Process is the competitive procurement process described in detail in this RFP. It will be conducted in the following two phases:

- (i) phase one of the RFP Process (the “**Phase 1 RFP Process** ”), which is comprised of each Phase 1 Proponent reviewing the Phase 1 RFP Documents and the Background Information in the Phase 1 Data Room, and submitting the Preliminary Technical Assessment Submission in respect of the Proponent’s ability to carry out the Project described in Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP. Only Phase 1 Proponents who receive an RFP Eligibility Notice from the Sponsors pursuant to RFP Section 4.5 and Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP will be eligible to participate in the Phase 2 RFP Process as Phase 2 Proponents, and have access to the Phase 2 Data Room and the Phase 2 RFP Documents; and
- (ii) phase two of the RFP Process (the “**Phase 2 RFP Process**”), which will, for Phase 2 Proponents, include:
  - A. the submission by such Proponents to the Sponsors of their Draft Design Agreements Submissions in accordance with this RFP;
  - B. such Proponents’ participation in Consultation Sessions; and
  - C. the submission by such Proponents to the Sponsors of Proposals in accordance with this RFP.



(b) Stage 2 – Implementation of the Development Phase Agreement

As further described in the RFP Data Sheet, once the Signing Parties and the Preferred Proponent have executed the Development Phase Agreement, the terms and conditions of the Development Phase Agreement shall determine how the Project is to proceed.

**1.3 Proponent Representative**

(1) All correspondence from the Sponsors to a Proponent will be sent to the person identified in the Proponent’s Non-Disclosure Agreement as the person who will receive information and notices on behalf of the Proponent (the “**Proponent Representative**”).

(2) Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

**1.4 Fairness Monitor**

(1) The Sponsors have retained the Fairness Monitor named in the RFP Data Sheet to monitor the RFP Process.

**SECTION 2 – THE RFP DOCUMENTS AND THE DATA ROOMS**

**2.1 RFP Documents**

- (1) The RFP documents (the “**RFP Documents**”) are:
- (a) this RFP;
  - (b) Schedule 1 – RFP Data Sheet;
  - (c) Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation;
  - (d) Schedule 3 – Form of Non-Disclosure Agreement;
  - (e) Schedule 4 – Phase 2 Proponent Consultation Process;
  - (f) Schedule 5 – Submission Requirements and Evaluation Criteria, consisting of:
    - (i) Part 1 – Technical Submission Requirements;
    - (ii) Part 2 – Financial Submission Requirements;
    - (iii) Part 3 – Price Form Submission Requirements; and
    - (iv) Part 4 – Proposal Format and Evaluation;
  - (g) Schedule 6 – Proposal Submission Form;

- (h) Schedule 6A – Participant Conflict Screening List;
- (i) Schedule 7 – Proponent Team Member Declaration;
- (j) Schedule 7A – Certificate of Officer;
- (k) Schedule 7B – Form of Accounting Firm Letter;
- (l) Schedule 8 – Price Submission Form;
- (m) Schedule 9 – Form of Development Phase Agreement (including all related Schedules, appendices and attachments);
- (n) Schedule 10 – Form of Assignment of Project Documents;
- (o) Schedule 11 – Preferred Proponent Completion Documents;
- (p) Schedule 12 – Advance DPA Works; and
- (q) Addenda to the RFP Documents, if any.

(2) Subject to RFP Section 2.2(1), the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, Background Information documents are not RFP Documents.

## **2.2 Conflicts or Inconsistencies in Documents**

(1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising the RFP Documents, the following shall apply:

- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, this RFP shall prevail over the Schedules to this RFP during the RFP Process;
- (b) in respect of all matters of interpretation of the Project and the Development Phase Agreement during the RFP Process, the Development Phase Agreement shall prevail over this RFP and all other Schedules to this RFP; and
- (c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Development Phase Agreement, the provisions of the Development Phase Agreement dealing with conflicts or inconsistencies shall govern.

(2) Despite RFP Section 2.2(1), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of RFIs.

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

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- (a) the Sponsors' electronic version of an RFP Document as contained in a Data Room; and
- (b) any other version of the same RFP Document (whether in electronic or hard copy format),

the Sponsors' electronic version as contained in the Data Room shall govern.

(4) If there is any conflict or inconsistency between documents, including the RFP Documents, contained in a Data Room and documents that are downloaded by the Proponent, the documents contained in the Data Room shall govern.

(5) If there is any conflict or inconsistency between two versions of the same RFP Document contained in a Data Room, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP Section 2.2(5), the date of each RFP Document shall be determined by the date and time when that document was placed in the Data Room by Infrastructure Ontario.

(6) If there is any conflict or inconsistency between documents, including the RFP Documents, contained in the Phase 1 Data Room and documents contained in the Phase 2 Data Room, the documents contained in the Phase 2 Data Room shall govern.

### **2.3 Distribution of RFP Documents to Proponents**

(1) During and for the purposes of the Phase 1 RFP Process, Infrastructure Ontario will circulate all Phase 1 RFP Documents, including Addenda, to Phase 1 Proponents by placing them in the Phase 1 Data Room, and notifying the relevant Proponent Representatives by e-mail that the Phase 1 RFP Documents have been added to the Phase 1 Data Room. Notification to such Proponents by Infrastructure Ontario that documents have been added to the Data Room is a courtesy only and such Proponents are solely responsible to ensure that they reviewed all documents in the Phase 1 Data Room in accordance with RFP Section 2.4(12) and, in particular, reviewed all documents in the Phase 1 Data Room immediately prior to submitting their Preliminary Technical Assessment Submissions.

(2) Except as provided in RFP Section 2.3(3), Infrastructure Ontario will circulate all Phase 2 RFP Documents, including Addenda, to Phase 2 Proponents by placing them in the Phase 2 Data Room and notifying the relevant Proponent Representatives by e-mail that the Phase 2 RFP Documents have been added to the Phase 2 Data Room. Notification to such Proponents by Infrastructure Ontario that documents have been added to the Phase 2 Data Room is a courtesy only and such Proponents are solely responsible to ensure that they reviewed all documents in the Phase 2 Data Room in accordance with RFP Section 2.4(12) and, in particular, have reviewed all documents in the Phase 2 Data Room immediately prior to submitting Proposals.

(3) The Sponsors may circulate some Phase 2 RFP Documents in hard copy format. If the Sponsors circulate any Phase 2 RFP Documents in hard copy format, Phase 2 Proponents will be notified of a circulation in hard copy format by way of a notice in the Phase 2 Data Room.

## **2.4 Data Rooms and Electronic Submission Portals**

(1) The Sponsors have established a secure electronic data room for the Phase 1 RFP Process as described in the RFP Data Sheet (the “**Phase 1 Data Room**”), including for the purposes of:

- (a) the distribution of Phase 1 RFP Documents and Addenda to such documents (including “black-lined” Phase 1 RFP Documents revised by Addenda to such documents);
- (b) the provision of Background Information; and
- (c) the receipt of RFIs from Phase 1 Proponents and the posting of responses to such RFIs.

(2) The Sponsors have established a secure electronic data room for the Phase 2 RFP Process as described in the RFP Data Sheet (the “**Phase 2 Data Room**”), including for the purposes of:

- (a) the distribution of Phase 2 RFP Documents and Addenda (including “black-lined” RFP Documents revised by Addenda);
- (b) the provision of Background Information; and
- (c) the receipt of RFIs from Phase 2 Proponents and the posting of responses to such RFIs.

(3) The Sponsors have established:

- (a) a secure Phase 1 Electronic Submission and Evaluation System for the Phase 1 RFP Process; and
- (b) a secure Phase 2 Electronic Submission and Evaluation System for the Phase 2 RFP Process.

(4) Within each Electronic Submission and Evaluation System, the Sponsors have established:

- (a) a portal for the Proponents’ submission of the Preliminary Technical Assessment Submissions (the “**Phase 1 Submission Portal**”); and
- (b) a portal for the submission of the Proponents’ Draft Design Agreements Submissions and Proposals (the “**Phase 2 Submission Portal**”).

(5) Each Data Room will be accessible on approximately the date set out in the Timetable.

(6) Details of and directions for Phase 1 Proponents to access the Phase 1 Data Room are set out in the RFP Data Sheet.

(7) Details of and directions for Phase 2 Proponents to access the Phase 2 Data Room are set out in the RFP Data Sheet.

- (8) Details of and directions for Phase 1 Proponents to access the Phase 1 Submission Portal on the Phase 1 Electronic Submission and Evaluation System are set out in the RFP Data Sheet.
- (9) Details of and directions for Phase 2 Proponents to access the Phase 2 Submission Portal on the Phase 2 Electronic Submission and Evaluation System are set out in the RFP Data Sheet.
- (10) Phase 1 Proponents shall not have the ability to access or download any Phase 2 RFP Documents that are not also Phase 1 RFP Documents, or, except as otherwise permitted by this RFP, the posting by the Sponsors of responses to RFIs related to the Phase 2 RFP Process or other documents related to the Phase 2 RFP Process.
- (11) The Sponsors may add, delete or amend documents in a Data Room at any time.
- (12) Each Proponent is solely responsible to ensure that it:
  - (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to the Phase 1 Data Room;
  - (b) contacts a representative of the Phase 1 Electronic Submission and Evaluation System if it has difficulty accessing the Phase 1 Data Room;
  - (c) contacts the Contact Person at the coordinates set out in the RFP Data Sheet if it has difficulty accessing, the Phase 2 Data Room;
  - (d) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from each Data Room;
  - (e) for Phase 1 Proponents, checks the Phase 1 Data Room frequently for the addition, deletion or amendment of the Phase 1 RFP Documents, Background Information and the posting of responses to RFIs related to the Phase 1 RFP Process, and, at all times during the Phase 1 RFP Process keeps itself informed of and takes into account the most current Phase 1 RFP Documents, Background Information and responses to such RFIs; and
  - (f) for Phase 2 Proponents, checks the Phase 2 Data Room frequently for the addition, deletion or amendment of the Phase 2 RFP Documents, Background Information and the posting of responses to RFIs related to the Phase 2 RFP Process, and, at all times during the Phase 2 RFP Process keeps itself informed of and takes into account the most current Phase 2 RFP Documents, Background Information and responses to such RFIs.

## **2.5 Proponent Investigations**

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

contained in the RFP Documents or in responses to RFIs. With respect to Phase 2 Proponents, the Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the Sponsors is more particularly set out in the Development Phase Agreement.

(2) Except as explicitly provided in the Development Phase Agreement, the Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents or Proponent Team Members in a Data Room as Background Information or of any other background or reference information or documents prepared by the Government of Ontario or by third parties and which may be made available to Proponents or Proponent Team Members by or through the Sponsors. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponents' and Proponent Team Members' sole risk and without recourse against the Sponsors or the Government of Ontario.

## **SECTION 3 – THE RFP PROCESS**

### **3.1 RFP Process Timetable**

(1) The general timetable for the RFP Process (the “**Timetable**”) is set out in the RFP Data Sheet. The Timetable includes a date for Proponents to submit each of the following submissions:

- (a) the last date for the submission of Preliminary Technical Assessment Submissions (the “**Preliminary Technical Assessment Submission Outside Date**”);
- (b) the deadline for the submission of the Draft Design Agreements Submissions (the “**Draft Design Agreements Submission Deadline**”); and
- (c) the deadline for the submission of Proposals (the “**Submission Deadline**”).

(2) The Sponsors may amend the Timetable in their sole discretion:

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

### **3.2 Questions and RFP Documents Comments**

#### **3.2.1 Contact Person**

(1) Except as set out in RFP Section 3.4.2, the Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the contact person or contact persons named in the RFP Data Sheet (the “**Contact Person**” or “**Contact Persons**”, as applicable) electronically at the coordinates listed in the RFP Data Sheet and the questions shall be submitted in accordance with RFP Section 3.2.2 and shall be submitted in the form provided in each Data Room.

3.2.2 Clarification/RFI Submission Process

(1) In addition to the requirement set out in RFP Section 3.2.1, the following rules shall apply to Proponents when submitting questions or requests for information (“**RFIs**”) to the Sponsors during the RFP Process:

- (a) Proponents are permitted to submit RFIs applicable only to the phase of the RFP Process they are participating in categorized as follows:
  - (i) RFIs that are of general application and that would apply to other Proponents participating in the same phase of the RFP as the Proponent (“**General RFIs**”); and
  - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”),

and if a Proponent submits an RFI that is applicable to a phase of the RFP Process other than the phase in which the Proponent is participating, the Sponsors may, in their sole discretion, elect to respond or decline to respond, to such RFI;

- (b) if the Sponsors disagree with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsors will give the Proponent an opportunity to either resubmit the RFI as a General RFI, failing which, such RFI will be deemed to have been withdrawn by the Proponent;
- (c) if the Sponsors determine, in their sole discretion, that a Commercially Confidential RFI, even if it is withdrawn or deemed to be withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the Sponsors may, subject to RFP Section 3.2.2(1)(e), issue a clarification to Proponents participating in the same phase of the RFP as the Proponent that submitted the RFI that deals with the same subject matter as the withdrawn Commercially Confidential RFI;
- (d) if the Sponsors agree with the Proponent’s categorization of a Commercially Confidential RFI, then the Sponsors will provide a response to that RFI to only the Proponent that submitted the RFI; and
- (e) if the Sponsors receive an RFI from a Phase 1 Proponent or from a Phase 2 Proponent that the Sponsors, in their sole discretion, determine is of general application or would provide a significant clarification of the RFP Documents or the RFP Process to Proponents participating in the other phase of the RFP as the Proponent that submitted the RFI, then the Sponsors may issue a clarification to Proponents participating in the other phase of the RFP.

(2) Responses to RFIs prepared and circulated by the Sponsors are not RFP Documents and do not amend the RFP Documents. If, in the Sponsors’ sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.7. Only a response to an RFI that has been incorporated into or issued as

an Addendum will modify or amend the RFP Documents and, otherwise, RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.

(3) Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.

(4) Proponents shall submit all RFIs electronically to the Contact Person in accordance with the instructions set out in the RFP Data Sheet.

(5) The Sponsors will respond to RFIs in written responses circulated to Proponents in accordance with the schedule set out in the Timetable. The Sponsors may, in their sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.

(6) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with this RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. None of the Sponsors and the Government of Ontario is responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in a Data Room or any other type of information provided by or communication made by the Sponsors or the Government of Ontario.

### 3.2.3 RFP Documents Comments

(1) For Phase 2 Proponents, the Sponsors may, in their sole discretion, request Proponents to submit comments on the RFP Documents and, in particular, comments on the Development Phase Agreement. Whether the Sponsors intend to permit or require the submission of such comments and the schedule and format for the submission of those comments is set out in the RFP Data Sheet. The Sponsors are not obliged to respond to each comment made by Proponents under this RFP Section 3.2.3. If the Sponsors accept a comment, or part of a comment, and that acceptance requires a change to the RFP Documents, the Sponsors shall implement that change by Addendum.

## 3.3 **Communications Restrictions**

### 3.3.1 Communications with Municipalities, Other Government Authorities, Utilities and Other Persons

(1) Subject to the restrictions in RFP Section 3.3.2 and any special rules set out in the RFP Data Sheet, Proponents, Proponent Team Members and their respective Advisors are permitted to communicate directly with any municipality, government authority or utility with respect to municipal, utility or other types of governmental requirements related to the Project. Under no circumstances will any special rules set out in the RFP Data Sheet in accordance with this RFP Section 3.3.1(1) override the provisions of RFP Section 3.3.2.

(2) None of the Sponsors and the Government of Ontario is, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors receive or believe they may have received from a municipality, a government authority, a utility or any other person. Proponents, Proponent Team Members and their respective Advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors or the Government of Ontario.

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**3.3.2 Prohibited Contacts and Lobbying Prohibition**

(1) Proponents and Proponent Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process.

(2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, the Preliminary Technical Assessment Submissions, the Draft Design Agreements Submissions or the Proposals:

- (a) any member of the Evaluation Committee or of any of the Phase 1 Evaluation Teams;
- (b) any Advisor to the Sponsors, the Evaluation Committee or any of the Phase 1 Evaluation Teams;
- (c) any employee or representative of:
  - (i) the Sponsors;
  - (ii) Ministry of Government and Consumer Services or any other Ministry, agency or entity listed in the RFP Data Sheet; or
  - (iii) the Premier of Ontario's office or the Ontario Cabinet office;
- (d) any member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
- (e) any directors, officers or consultants of any entity listed in RFP Sections 3.3.2(2)(a) to (d).

(3) If a Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives, in the opinion of the Sponsors, contravenes RFP Section 3.3.1(1), 3.3.2(1) or 3.3.2(2), the Sponsors may, in their sole discretion:

- (a) take any action in accordance with RFP Section 9.1.2; or
- (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

For clarity, the Sponsors are not obliged to take the actions set out in RFP Section 3.3.2(3)(a) or (b).

**3.3.3 Media Releases, Public Disclosures and Public Announcements**

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

(2) Neither the Proponents or the Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsors' prior written consent, which consent may be withheld in the Sponsors' sole discretion. Notwithstanding this RFP Section 3.3.3(2), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.

(3) For the purpose of greater clarity, RFP Section 3.3.3(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Project with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.

**3.3.4 Restrictions on Communications between Proponents – No Collusion**

(1) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Preliminary Technical Assessment Submission, Draft Design Agreements Submission or Proposal or the Preliminary Technical Assessment Submission, Draft Design Agreements Submission or Proposal of any other Proponent in a fashion that would contravene Applicable Law. Proponents shall prepare and submit such submissions independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

(2) For greater clarity, RFP Section 3.3.4(1) applies to Proponents and Proponent Team Members and their respective Advisors, employees and representatives.

**3.4 Meetings with Proponents**

**3.4.1 General Proponents Meeting(s)**

(1) The Sponsors may, in their sole discretion, convene general Proponents meetings with regards to Phase 1 Proponents or Phase 2 Proponents (each, a “**Proponents Meeting**”) on the dates and at the times set out in the Timetable and at the location and for the purposes set out in the RFP Data Sheet. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Proponents Meeting is at the Proponent's sole risk and responsibility.

(2) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the Sponsors may give oral answers at a Proponents Meeting, those answers shall

not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2.2 for response in accordance with RFP Section 3.2.2.

(3) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents Meetings by the Sponsors or any of their respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7.

### 3.4.2 Commercially Confidential Proponent Meetings

(1) For Phase 2 Proponents, the Sponsors may, in their sole discretion, convene commercially confidential meetings with individual Proponents (“**Commercially Confidential Meetings**”), which may include the Consultation Sessions described in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP and additional Commercially Confidential Meetings between the Sponsors (and their representatives and Advisors) and individual Proponents (and their representatives and Advisors) to discuss other matters related to the RFP Process, the Proponents’ Draft Design Agreements Submission or the Proponents’ Proposals.

(2) Whether the Sponsors intend to hold Commercially Confidential Meetings and the location of those meetings is set out in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP and in the RFP Data Sheet. The approximate date and time of Commercially Confidential Meetings is described in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP and, if applicable, set out in the Timetable. While attendance at Commercially Confidential Meetings by Phase 2 Proponents is not mandatory, such Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Commercially Confidential Meeting is at the Proponent’s sole risk and responsibility.

(3) If the Sponsors hold Commercially Confidential Meetings, the Fairness Monitor may be present during some or all of those meetings.

(4) No oral or written statement, consent, waiver, acceptance, approval or anything else said or done by the Sponsors or any of their respective Advisors, employees or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 4 – Phase 2 Proponent Consultation Process shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7.

(5) The Proponent, its Proponent Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:

- (a) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 4 – Phase 2 Proponent Consultation Process is not and shall not be deemed or considered to be an indication of a preference by the Sponsors or the Government of Ontario or a rejection by the Sponsors or the Government of Ontario of anything said or done

by the Proponent, Proponent Team Member or any of their respective Advisors or representatives;

- (b) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 4 – Phase 2 Proponent Consultation Process shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Development Phase Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7, provided that the Sponsors shall not be under any obligation to confirm any information by Addendum;
- (c) the Sponsors may share process-related information, including clarifying information, with all Phase 2 Proponents if the need arises; and
- (d) the Proponent, its Proponent Team Members and their respective Advisors and representatives:
  - (i) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the RFP;
  - (ii) waive any and all rights to contest and/or protest the RFP Process, the RFP Documents or the rules with respect to the Commercially Confidential Meetings, including the Commercially Confidential Meetings themselves, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent, another Proponent’s Proponent Team Member, or their respective Advisors or representatives that was not received by the Proponent, its own Proponent Team Member(s) or any of their respective Advisors or representatives; and
  - (iii) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

### 3.5 Visiting the Site and the Existing Facilities

#### 3.5.1 Scheduled Visits

(1) The Sponsors will not schedule any visit to the Site or the Existing Facilities for any Phase 1 Proponent or its representatives and Advisors. If the Sponsors wish to schedule dates for (a) Site visits other than to the Existing Facilities (“**Site Visits (Non-Existing Facilities)**”) or (b) visits to the Existing Facilities (“**Existing Facilities Site Visits**”) for all Phase 2 Proponents and their representatives and Advisors (“**Scheduled Visits**”), the dates and times of the Scheduled Visits will be set out in the Timetable. For clarity, Scheduled Visits are in addition to any Phase 2 Proponent visits scheduled in accordance with RFP Sections 3.5.2 and 3.5.3.

(2) The provisions of RFP Sections 3.5.2(3) to 3.5.2(7) will apply to Site Visits (Non-Existing Facilities) that are Scheduled Visits and the provisions of RFP Sections 3.5.3(4) and 3.5.3(5) will apply to Existing Facilities Site Visits that are Scheduled Visits, as applicable, *mutatis mutandis*.

(3) Any statement made by Infrastructure Ontario, the Client or any of their respective Advisors or representatives during any Scheduled Visit or any additional Site Visit (Non-Existing Facilities) or Existing Facilities Site Visit, if any, shall not and will not be relied upon in any way by the Phase 2 Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Development Phase Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7, provided that neither Infrastructure Ontario nor the Client shall be under any obligation to confirm any information by Addendum.

### 3.5.2 Additional Site Visits (Non-Existing Facilities)

(1) Subject to RFP Section 3.5.1(2), this RFP Section 3.5.2 applies to Site Visits (Non-Existing Facilities) by the Phase 2 Proponents that are not Scheduled Visits. No Phase 1 Proponent will be permitted any such Site Visit (Non-Existing Facilities).

(2) Phase 2 Proponents are not permitted access to the Site other than the Existing Facilities in accordance with this RFP Section 3.5.2, save and except to attend a Site Visit (Non-Existing Facilities) which is a Scheduled Visit or pursuant to a written response from the Sponsors to a request made in accordance with RFP Section 3.5.2(3). The location and a brief description of the Site are set out in the RFP Data Sheet and are described fully in the Development Phase Agreement and the Background Information.

(3) A Phase 2 Proponent that wishes to arrange a Site Visit (Non-Existing Facilities) shall submit a request to the Sponsors at least four Business Days prior (or such other time as is set out in the RFP Data Sheet) to the Proponent's proposed date and time for a Site Visit (Non-Existing Facilities) and shall describe:

- (a) the proposed date and time it would like to carry out the Site Visit (Non-Existing Facilities);
- (b) the purpose of the Site Visit (Non-Existing Facilities);
- (c) the names, titles and contact information of the Proponent's representatives who will be attending the Site Visit (Non-Existing Facilities); and
- (d) any photographs, recordings (video and/or sound) or measurements the Proponent would like to take, any inspections or tests the Proponent would like to perform, and any data or samples the Proponent would like to collect.

(4) Unless otherwise advised by the Sponsors in their sole discretion and subject to any requirements of the Sponsors (including for the purpose of safeguarding the privacy of persons at the Site), during each Site Visit (Non-Existing Facilities), Phase 2 Proponents shall be permitted to:

- (a) take photographs;

- (b) take any recording (video and/or sound);
- (c) perform non-obtrusive inspections or tests;
- (d) take measurements; and
- (e) collect data or samples by non-obtrusive means.

(5) During each Site Visit (Non-Existing Facilities), no Phase 2 Proponent shall be permitted to conduct any obtrusive investigations, unless the Proponent receives the prior written consent of the Sponsors, which may be granted, granted with conditions or refused, in the sole discretion of the Sponsors.

(6) Infrastructure Ontario or the Client may, in its sole discretion, require that an Infrastructure Ontario or Client representative be present to monitor the Phase 2 Proponent's activities during the Site Visit (Non-Existing Facilities). The Sponsors will confirm whether an Infrastructure Ontario or Client representative will be present at the Site Visit (Non-Existing Facilities) at the time it is approved and scheduled. The period(s) during which Site Visits (Non-Existing Facilities) will be permitted is set out in the Timetable.

(7) The Phase 2 Proponent acknowledges that the Sponsors may, in their sole discretion, cancel or reschedule any Site Visit (Non-Existing Facilities) or otherwise change the terms of any Site Visit (Non-Existing Facilities), on short notice or no notice to the Proponent and Proponent Team Members or their representatives.

### 3.5.3 Additional Existing Facilities Visits

(1) Subject to RFP Section 3.5.1(2), this RFP Section 3.5.3 applies to Existing Facilities Site Visits by Phase 2 Proponents that are not Scheduled Visits. No Phase 1 Proponent will be permitted any such Existing Facilities Site Visit.

(2) Phase 2 Proponents are not permitted to access the Existing Facilities save and except to attend an Existing Facilities Site Visit which is a Scheduled Visit or pursuant to a written response from the Sponsors to a request made in accordance with RFP Section 3.5.3(3). The Existing Facilities, if any, are listed in the RFP Data Sheet and may be described more fully in the Development Phase Agreement and the Background Information. An Infrastructure Ontario or Client representative will at all times be present to monitor the Proponent's activities during any Existing Facilities Site Visit.

(3) A Phase 2 Proponent that wishes to arrange an Existing Facilities Site Visit shall submit a request to the Sponsors at least four Business Days prior (or such other time as is set out in the RFP Data Sheet) to the Proponent's proposed date and time for an Existing Facilities Site Visit. The request shall set out the:

- (a) proposed date and time, and alternate date and time, of the proposed Existing Facilities Site Visit;
- (b) purpose of the Existing Facilities Site Visit;
- (c) areas of the Existing Facilities for which access is requested;

- (d) names, titles and contact information of the Proponent’s representatives who will be attending the Existing Facilities Site Visit; and
- (e) any photographs, recordings (video and/or sound) or measurements the Proponent would like to take, any inspections or tests the Proponent would like to perform, and any data or samples the Proponent would like to collect.

(4) If the Phase 2 Proponent has received approval for and written confirmation of any Existing Facilities Site Visit from the Sponsors, unless otherwise set out in the Sponsors’ confirmation the following shall apply to the Existing Facilities Site Visit:

- (a) all Proponent and Proponent Team Member representatives upon arrival at each of the Existing Facilities shall report to the appropriate authority at the Existing Facilities, sign in as required by the Existing Facilities and receive and wear an identification badge;
- (b) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the Sponsors’ representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
- (c) all Proponent and Proponent Team Member representatives shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying or working in the Existing Facilities;
- (d) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the Existing Facilities to which the Proponent has been granted access in the Sponsors’ confirmation; and
- (e) the Proponent and Proponent Team Member representatives shall not take any photographs, recordings (video and/or sound) or measurements, perform any inspections or tests, or collect any data or samples without the prior written consent of the Sponsors, which may be granted, granted with conditions or refused, in the sole discretion of the Sponsors. If any such actions are permitted by the Sponsors, it may be completed by the Proponent and Proponent Team Member representatives only in the specific areas of the Existing Facilities for which such consent has been given.

(5) The Phase 2 Proponent acknowledges that because the Existing Facilities are in use, unforeseen circumstances can arise at the Existing Facilities and the Sponsors may, in their sole discretion, cancel or reschedule any Existing Facilities Site Visit, change the areas of access of the Existing Facilities Site Visit or otherwise change the terms of any Existing Facilities Site Visit on short notice or no notice to the Proponent and Proponent Team Members or their representatives.

### **3.6 Changes to Proponents, Proponent Team Members, Identified Proponent Parties and Key Individuals**

(1) After the date the Phase 1 Proponent submitted its Preliminary Technical Assessment Submission, the Proponent shall not change:

- (a) any of its shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), Proponent Team Members or other parties identified in the Proponents' Preliminary Technical Assessment Submission; or
- (b) any proposed subcontractors or proposed Key Individuals identified in the Proponent's Proposal

(the "**Identified Proponent Parties**"), without the prior written consent of the Sponsors.

(2) Without limiting the generality of the foregoing, Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section 3.6.

(3) No later than the deadline set out in the Timetable, a Proponent may request a change in any of the Identified Proponent Parties described in RFP Section 3.6(1)(a), including any proposed withdrawal from, addition to, or substitution of the Identified Proponent Parties, (each a "**Proposed Change in Identified Proponent Party**") by delivering a request notice to the Contact Person, requesting the Sponsors' consent to such Proposed Change in Identified Proponent Party.

(4) If an Identified Proponent Party described in RFP Section 3.6(1)(a) withdraws from the RFP Process in a manner that does not make it possible for the Proponent to deliver the request notice in advance of obtaining the Sponsors' consent, the Proponent shall notify the Sponsors of the withdrawal as soon as the Proponent becomes aware of the withdrawal and shall deliver a request notice to the Contact Person, requesting the Sponsors' consent to a Proposed Change in Identified Proponent Party, either by substituting or proceeding without any substitute of the withdrawn Identified Proponent Party, such request notice to be delivered no later than six weeks after the occurrence of the date of withdrawal or 21 days before the Submission Deadline, whichever is earlier.

(5) A request notice delivered under either RFP Sections 3.6(3) or 3.6(4), as applicable, shall:

- (a) clearly identify the Proposed Change in Identified Proponent Party (including, as applicable, the continuation in the absence of a withdrawn Identified Proponent Party or any proposed additional or substitute Identified Proponent Party);
- (b) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors in their sole discretion, that the Proposed Change in Identified Proponent Party will not materially adversely affect the Proponent's ability to submit a complete and compliant Proposal or impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Development Phase Agreement; and
- (c) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors in their sole discretion, that the reconstituted Proponent team (whether through addition, substitution or continuation without replacement of a withdrawal of one or more of the Identified Proponent Parties, as applicable) would have met or exceeded any applicable criteria applied during the Preliminary Technical Assessment process.



(6) In reviewing a request made in accordance with RFP Section 3.6(5), the Sponsors may, in their sole discretion and at any time, instruct the Proponent to deliver further documentation or additional information as may be reasonably requested by the Sponsors to assess any Proposed Change in Identified Proponent Party. When a request for further documentation or additional information is made by the Sponsors, the Proponent shall deliver such information and documentation as soon as possible and in any event no later than the deadlines set out in RFP Sections 3.6(3) or 3.6(4), as applicable. The Sponsors are under no obligation to consider any further documentation or additional information delivered after the applicable deadline.

(7) With respect to any request for a Proposed Change in Identified Proponent Party, the Sponsors may, in their sole discretion, do any one or more of the following, as applicable:

- (a) consent to or reject the Proposed Change in Identified Proponent Party;
- (b) impose such other terms and conditions as the Sponsors may require in connection with any consent to a Proposed Change in Identified Proponent Party; and/or
- (c) following a rejection of a Proposed Change in Identified Proponent Party (where such Proposed Change in Identified Proponent Party involves a substitution of an Identified Proponent Party), permit the Proponent to deliver a further request notice for a Proposed Change in Identified Proponent Party identifying an alternate substitute for review by the Sponsors, subject to the same deadlines, terms, conditions and standard of review as set out in this RFP Section 3.6.

(8) The Sponsors may, in their sole discretion, disqualify a Proponent and terminate its continued involvement in the RFP Process or allow such Proponent to continue under such terms and conditions as the Sponsors may require, in their sole discretion, in the event of any of the following:

- (a) an actual change in any Identified Proponent Party is made by the Proponent at any time after the date the Proponent submitted its Preliminary Technical Assessment Submission without obtaining prior consent of the Sponsors (including any withdrawal of an Identified Proponent Party described in RFP Section 3.6(4));
- (b) a Proposed Change in Identified Proponent Party is made after the deadlines set out in RFP Sections 3.6(3) or 3.6(4), as applicable; or
- (c) a change in circumstances with respect to a Proponent after the date it submitted a Preliminary Technical Assessment Submission that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Development Phase Agreement.

(9) If, at any time after the date the Proponent submitted a Preliminary Technical Assessment Submission, prior to DPA Close, and notwithstanding any other provision in this RFP, there is, as applicable, a change in Control of the Phase 2 Proponent or of one of its Proponent Team Members or a change in Control of the Phase 1 Proponent (the "**Acquiree**") as a result of an acquisition of the Acquiree by one of the other Proponents or one of the other Proponent Team Members of another Proponent (the "**Acquirer**"):

- (a) the Acquiree shall be immediately disqualified from further participation in this RFP. In the event that a Proponent Team Member is the Acquiree, the affected Proponent may request a change of the Acquiree and the Sponsors shall consider such request in their sole discretion in accordance with this RFP Section 3.6. In the event that such request to change the Proponent Team Member is rejected by the Sponsors, the Sponsors shall disqualify the Proponent from continuing in the RFP Process; or
- (b) the Sponsors may, in their sole discretion, allow the Acquirer to continue in the RFP Process, however, the Sponsors' consent to continue may be subject to such terms and conditions as the Sponsors may require.

(10) If, after identification of the Preferred Proponent pursuant to RFP Section 11.1, the Sponsors determine, acting reasonably, that it is in the best interests of the Sponsors that any individual proposed as a Key Individual in the Preferred Proponent's Proposal be substituted, the Sponsors shall notify the Preferred Proponent (including a detailed explanation of the reasons for such determination), and, within 10 days of receipt by the Preferred Proponent of such notice, the Preferred Proponent shall provide the Sponsors with relevant information on the proposed substitution and shall consult with the Sponsors before finalizing the appointment of such substitution. The proposed substitution must have equal or better qualifications than the qualifications of the Key Individual that they are replacing.

(11) Subject to and without limiting the provisions of RFP Section 3.6(9), if, at any time during the Phase 1 RFP Process, a prospective Proponent Prime Team Member of any Proponent team has publicly announced a change in Control involving a merger with or acquisition of another prospective Proponent Team Member (or Proponent Prime Team Member) of a different prospective Proponent team (each of the Proponent Prime Team Member and Proponent Team Member(s) are referred to as an "**Impacted Participant**"), then, if the Impacted Participants wish to remain on separate teams for the duration of the Phase 1 RFP Process and the Phase 2 RFP Process, each Impacted Participant shall promptly deliver a notice to the Sponsors disclosing the announced change in Control.

(12) Upon the receipt of the notice required by RFP Section 3.6(11) and in anticipation of the change in Control, the Sponsors may, in their sole discretion, require the delivery of assurances and agreements from both of the affected prospective Proponent teams and their respective Impacted Participants regarding the implementation of safeguards necessary to protect the integrity of the RFP Process, to the satisfaction of the Sponsors, in their sole discretion.

### **3.7 Addenda/Changes to the RFP Documents**

(1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline (for matters relating to the Proposal and prior to DPA Close for all other matters). The Sponsors shall issue changes to the RFP Documents by Addenda only.

(2) No Phase 1 Proponent shall be entitled to receive any Addendum to the Phase 2 RFP Documents unless such Addendum is also in respect of the Phase 1 RFP Documents, provided that a Phase 1 Proponent that becomes a Phase 2 Proponent shall be entitled to receive all Addenda to the Phase 2 RFP Documents, whether issued before or after such Phase 2 Proponent became a Phase 2 Proponent.

(3) No statement, whether oral or written, made by the Sponsors or the Sponsors' Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents other than as set out in any Addendum.

(4) The approximate final date that the Sponsors will issue an Addendum in respect of the Development Phase Agreement is set out in the Timetable. The Sponsors may issue other Addenda at any time.

(5) The Proponent is solely responsible to ensure that it has received all Addenda issued by the Sponsors related to the phase of the RFP Process in which it is participating. Proponents may, in writing, seek confirmation of the number of Addenda related to each phase under this RFP from the Contact Person.

(6) The Sponsors shall issue Addenda by placing them in each applicable Data Room.

(7) Infrastructure Ontario will notify the Proponent Representatives of Phase 1 Proponents by e-mail that an Addendum related to the Phase 1 RFP Process has been placed in the Phase 1 Data Room. Infrastructure Ontario will notify the Proponent Representatives of Phase 2 Proponents by e-mail that an Addendum related to the Phase 2 RFP Process has been placed in the Phase 2 Data Room. Any such notification by Infrastructure Ontario is a courtesy only and the Proponents are solely responsible to ensure that they reviewed all documents in the applicable Data Room in accordance with RFP Section 2.4(12), and, in particular, have reviewed all documents in the applicable Data Room immediately prior to submitting, with regards to the Phase 1 Proponents, Preliminary Technical Assessment Submissions, and, with regards to the Phase 2 Proponents, Draft Design Agreements Submissions and Proposals.

(8) Any reference to any one or all of the RFP Documents in the RFP Documents includes any amendments to the RFP Documents made in accordance with this RFP Section 3.7.

### **3.8 Freedom of Information, Confidentiality and Copyright Matters**

#### **3.8.1 *Freedom of Information and Protection of Privacy Act***

(1) Proponents are advised that the Sponsors may be required to disclose the RFP Documents, Background Information, and a part or parts of any Proposal or any other submission of a Proponent under this RFP pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA").

(2) Proponents are also advised that FIPPA does provide protection for confidential and proprietary business information. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals and other submissions under this RFP.

(3) Subject to the provisions of FIPPA, the Sponsors will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed based on an order or decision in accordance with FIPPA or otherwise as required under Applicable Law.

### 3.8.2 Non-Disclosure Agreements

(1) Each Proponent Team Member must, complete, execute, deliver and submit to the Sponsors a binding non-disclosure agreement in the form attached as Schedule 3 – Form of Non-Disclosure Agreement to this RFP and otherwise satisfactory to the Sponsors, in order to obtain and review the RFP Documents and Background Information (each is a “**Non-Disclosure Agreement**”). Details regarding the submission of Non-Disclosure Agreements are set out in the RFP Data Sheet. Each Proponent acknowledges and agrees that its confidentiality obligations in this RFP shall be legally binding on all entities who have signed a Non-Disclosure Agreement, whether or not they submit a Preliminary Technical Assessment Submission or a Proposal. If and to the extent that the provisions of the Non-Disclosure Agreement are inconsistent or conflict with the confidentiality requirements of this RFP, the more stringent confidentiality requirements shall govern.

### 3.8.3 Confidential Information

(1) For the purpose of this RFP Process, “**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the Sponsors or the Government of Ontario in connection with the RFP Process, the RFP Documents or the Project, whether supplied, obtained from or provided before or after the RFP Process and all other material, data, information or any item in any form prepared by the Proponent containing, in whole or in part, any such information.

(2) The Proponent agrees that all Confidential Information:

- (a) shall remain the sole property of the Sponsors or the Government of Ontario, as applicable, and the Proponent shall treat it as confidential;
- (b) shall not be used by the Proponent for any purpose other than developing and submitting a Preliminary Technical Assessment Submission, a Proposal and other submissions in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Signing Parties;
- (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent’s preparation of its Preliminary Technical Assessment Submission, Proposal and other submissions in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Signing Parties, without prior written consent of the Sponsors or the Government of Ontario, as applicable;
- (d) shall not be used in any way detrimental to the Sponsors or the Government of Ontario; and

- (e) if requested by the Sponsors, shall be deleted permanently by the Proponents (if in electronic format) or returned by the Proponents to the Sponsors (if in hard copy format) no later than 10 calendar days after that request.

(3) Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8.3 by any person to whom it discloses the Confidential Information, including, for greater clarity, the Proponent's employees, representatives and Advisors and the Proponent Team Members and their employees, representatives and Advisors. Each Proponent shall indemnify each of the Sponsors and the Government of Ontario and each of their related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.8.3 by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the Sponsors shall act as trustee for each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or the Government of Ontario or any of their respective directors, officers, consultants, employees, agents or representatives and that the Sponsors have agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives.

(4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8.3 would cause the Sponsors and the Government of Ontario and each of their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors and the Government of Ontario and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8.3 upon application to a court of competent jurisdiction without proof of actual damage to the Sponsors or the Government of Ontario or any of their related entities.

(5) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.8.3 shall survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Proponents, whether or not they submit a Preliminary Technical Assessment Submission or a Proposal.

(6) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:

- (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
- (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the Sponsors, and provided that it was not acquired by the Proponent under an obligation of confidence; or

- (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of confidence with respect to such information.

#### 3.8.4 Copyright and Use of Information in Proposals

(1) The Sponsors' rights, as set out in this RFP Section 3.8.4, to the Proposal and all other Submittal Information submitted by the Proponent during the RFP Process shall be granted to the Sponsors as follows:

- (a) if a Proposal Fee is offered in accordance with RFP Section 12.4.2:
  - (i) for unsuccessful Proponents, upon payment of the Proposal Fee; and
  - (ii) for the Preferred Proponent, upon DPA Close; or
- (b) if RFP Section 3.8.4(1)(a) does not apply, upon submission of a Preliminary Technical Assessment Submission or any part of a Proposal.

(2) Proponents shall not use or incorporate into their Preliminary Technical Assessment Submissions or Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licensing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Project.

(3) All requirements, documents plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the property of the Sponsors. Upon request of the Sponsors, all such documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be deleted permanently (if in electronic format) or returned to the Sponsors (if in hard copy format).

(4) The Proponent shall grant to each of the Sponsors and Her Majesty the Queen in Right of Ontario a non-exclusive, perpetual, irrevocable, worldwide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-license without the consent of the Proponent) to use the Submittal Information (the "**Submittal Information Licence**"). Without limiting the foregoing, the Submittal Information Licence shall include the right to modify the Submittal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except Dev Co in relation to this Project, be liable to the Sponsors, Her Majesty the Queen in Right of Ontario or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Submittal Information pursuant to the Submittal Information Licence.

(5) For the purpose of this RFP Section 3.8.4, "**Submittal Information**" includes:

- (a) all information contained in a Preliminary Technical Assessment Submission or a Proposal or which is disclosed by or through a Proponent to the Sponsors during the evaluation of the Preliminary Technical Assessment Submission or the Proposal (including during any Proponent Interview) or prior to the execution of any Development Phase Agreement; and

- (b) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation (if applicable) of the Preliminary Technical Assessment Submission, the Proposal, any Draft Design Agreement, any Design Agreement, the Assignment of Project Documents or the Development Phase Agreement.

(6) Proponents shall ensure that all intellectual property rights associated with any and all of the Submittal Information (including copyright and moral rights but excluding patent rights) provide for and give Infrastructure Ontario, the Client and Her Majesty the Queen in Right of Ontario the rights set out in this RFP Section 3.8.4. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of Infrastructure Ontario, the Client or Her Majesty the Queen in Right of Ontario to use any of the Submittal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against the Sponsors, Her Majesty the Queen in Right of Ontario, and each of their respective Advisors, and that the provisions of this RFP Section 3.8.4 shall take precedence and govern.

### 3.8.5 Open Data Directive

(1) Proponents acknowledge that the RFP Documents and a part or parts of any Proposal are subject to the Open Data Directive and that Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

## 3.9 **Conflict of Interest and Ineligible Persons**

### 3.9.1 Conflict of Interest

(1) Proponents and Proponent Team Members and each of their Advisors shall disclose, in each

- (a) Preliminary Technical Assessment Submission Form;
- (b) Conflict of Interest, Confidential Information and Litigation Declaration;
- (c) Proposal Submission Form; and
- (d) Phase 2 Proponent Team Member Declaration (in respect of Proponent Team Members of Phase 2 Proponents),

all perceived, potential and actual Conflicts of Interest.

(2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of its Preliminary Technical Assessment Submission or Proposal, discovers any perceived, potential or actual Conflict of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.

(3) At the request of the Sponsors, the Proponent shall provide the Sponsors with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent shall submit any additional information to the

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Sponsors that the Sponsors consider necessary to properly assess the perceived, potential or actual Conflict of Interest.

(4) The Sponsors may, in their sole discretion, exclude any Proponent Team Member or Proponent Advisor on the grounds of Conflict of Interest.

(5) Without limiting the generality of RFP Sections 3.9.1(4) or (6), the Sponsors may, in their sole discretion, require the Proponent, Proponent Team Member or a Proponent's Advisor to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.

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

(7) For the purposes of this RFP Process "**Conflict of Interest**" includes any situation or circumstance where a Proponent, any Proponent Team Member, any Proponent Advisor or any of the employees of a Proponent, Proponent Team Member or Proponent Advisor engaged in the development or oversight of development of the Preliminary Technical Assessment Submission or of the Proponent's Proposal (including for such employees in their personal capacities):

- (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsors or their Advisors, or
  - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Development Phase Agreement if that Proponent was determined to be the Preferred Proponent under the RFP Process;
- (b) has contractual or other obligations to any of the Sponsors that could or could be seen to have been compromised or impaired as a result of its participation in the RFP Process or the Project; or
- (c) has knowledge of confidential information (other than Confidential Information disclosed by the Sponsors in the normal course of the RFP Process) of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.

(8) The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Sponsors in their sole discretion.



### 3.9.2 Ineligible Persons

(1) As a result of their involvement in the Project, the persons named as “Ineligible Persons” in the RFP Data Sheet, together with any persons who formerly worked on behalf of either of the Sponsors and in the course of such work had knowledge of confidential information of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage (collectively “**Ineligible Persons**”), their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of this Project and, subject to RFP Sections 3.9.2(3) and 3.9.2(4) any person controlled by, that controls or that is under common control with the Ineligible Persons (each an “**Ineligible Person’s Affiliate**”) are not eligible to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member.

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

(3) An Ineligible Person’s Affiliate may be eligible to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member only after it has obtained a written consent from the Sponsors permitting it to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member, the Proponent 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 that the Proponent wishes to include on its team or as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member;
- (b) information regarding the Ineligible Person’s Affiliate’s relationship to the Ineligible Person listed in the RFP Data Sheet; and
- (c) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any perceived potential or actual Conflict of Interest with respect to the Ineligible Person’s Affiliate.

(4) Upon the Contact Person’s receipt of a Proponent’s properly completed request for consent in accordance with RFP Section 3.9.2(3), the Sponsors shall, in their sole discretion, make a determination as to whether they consider there to be a perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsors’ 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 is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsors shall add the Ineligible Person’s Affiliate to the Ineligible Persons list by Addendum.

### 3.9.3 Conflict of Interest Screening List

(1) Each Phase 1 Proponent shall deliver as part of its Preliminary Technical Assessment Submission the list of significant individuals having involvement in the preparation and/or oversight of

the preparation of the Preliminary Technical Assessment Submission in the form prescribed by Form 2-1 – Master Submission Form to Part 2 – Forms of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP, which list shall be used by the Sponsors in their assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Phase 1 Proponent, or any employee or Advisor of the Phase 1 Proponents in respect of the Project.

(2) Each Phase 2 Proponent shall deliver to the Contact Person, no later than the deadline set out in the Timetable, the list of Identified Proponent Parties (including Key Individuals) and other significant individuals having involvement in the preparation and/or oversight of the preparation of the Proposal in the form prescribed by Schedule 6A – Participant Conflict Screening List to this RFP, which list shall be used by the Sponsors in their assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Phase 2 Proponent, Identified Proponent Party or any other employee or Advisor of the Phase 2 Proponent in respect of the Project.

### **3.10 Proponent Costs**

(1) The Proponents and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proponents' involvement in:

- (a) the preparation and submission of their Preliminary Technical Assessment Submissions, the Draft Design Agreements Submissions, and all other submittals under this RFP;
- (b) the preparation, presentation and submission of their Proposals;
- (c) attendance at any Proponents Meeting, Commercially Confidential Meeting, Proponent Interview or any other meeting with the Sponsors;
- (d) due diligence and information gathering processes;
- (e) Scheduled Visits, Site Visits (Non-Existing Facilities) or Existing Facilities Site Visits;
- (f) preparation of responses to questions or requests for information from the Sponsors;
- (g) preparation of the Proponent's own RFIs during the clarification process;
- (h) negotiations; and
- (i) with regards to the Preferred Proponent, achieving DPA Close.

(2) Except as explicitly provided in RFP Sections 12.4.2 and 12.5(3), if applicable, the Sponsors are not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

### **3.11 Insurance and Workers Compensation**

#### **3.11.1 Insurance Required during the RFP Process**

(1) During the RFP Process, the Proponent is required to obtain, and to cause all Proponent Team Members and other persons listed below to obtain, and at all times keep and maintain in force the insurance as set out in RFP Sections 3.11.1(1)(a) and (b), whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Site (including the Existing Facilities) or at any other facilities or premises of the Sponsors for any purpose whatsoever:

- (a) Commercial/Comprehensive General Liability insurance, having an inclusive limit of not less than \$5,000,000 for each occurrence or accident and general aggregate, and covering all sums which the Proponent, a Proponent Team Member or any other persons listed above may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations or activities carried out in connection with this RFP or RFP Process. The policy or policies shall include as insureds or additional insureds each of the Government of Ontario and the Client (and each of their respective directors, officers, employees, legislators, members, officials, consultants and agents), and an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by or on behalf of the Government of Ontario and the Client; and
- (b) Motor Vehicle Liability insurance, in the amount of \$2,000,000 per accident, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants, Advisors and agents) while on or at the Site or on or at any other facilities or premises of the Sponsors.

(2) As a condition of allowing access to the Site (including the Existing Facilities) or to other facilities or premises of the Sponsors, the Sponsors reserve the right to require Proponents to provide evidence acceptable to the Sponsors that the insurance required by RFP Sections 3.11.1(1)(a) and (b) is in place.

(3) If a Proponent proposes to perform any investigations at the Site (including the Existing Facilities), the risk related to which may not be fully insured under the above policies, the Sponsors may, in their sole discretion, require the Proponent, at its own cost and expense, to obtain insurance additional to that specified in RFP Sections 3.11.1(1)(a) and (b).

(4) All insurance policies required to be obtained by Proponents shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered, or adversely materially amended without the insurer giving at least 30 calendar days prior written notice to the Sponsors.

3.11.2 Workplace Safety during the RFP Process

(1) As a condition of allowing access to the Site (including the Existing Facilities) or any other facilities or premises of the Sponsors, each of the Sponsors may, in its sole discretion, require Proponents to provide evidence acceptable to the Sponsors that the Proponent and its Proponent Team Members are registered with the Workplace Safety Insurance Board of Ontario, if such registration is required under Applicable Law, or, if such registration is not required under Applicable Law, to provide evidence acceptable to it that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to it.

**SECTION 4 – PRELIMINARY TECHNICAL ASSESSMENT SUBMISSION**

**4.1 Form and Content of Preliminary Technical Assessment Submission**

(1) Each Phase 1 Proponent shall submit a Preliminary Technical Assessment Submission comprised of the following parts:

- (a) a technical submission in respect of the requirements specified in Part A – Project Experience Summary of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP (the “**Project Experience Submission**”);
- (b) a financial strength submission in respect of the requirements specified in Part B – Financial Strength Documentation of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP (the “**Financial Strength Submission**”); and
- (c) an additional documents submission in respect of the requirements specified in Part C – Additional Documentation of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation, including:
  - (i) a Preliminary Technical Assessment Submission Form, in the form of Form 2-1 Master Submission Form, including a Participant Conflicts Screening List, in the form of Appendix A to Form 2-1;
  - (ii) a consent declaration from each Proponent Team Member, including each member of a Joint Venture, in the form of Form 2-2 – Consent Declaration;
  - (iii) a Conflict of Interest, Confidential Information and Litigation Declaration, in the form of Form 2-3 – Conflict of Interest, Confidential Information and Litigation Declaration;
  - (iv) an officer's certificate in the form of Form 2-4A – Certificate of Officer for each Proponent Prime Team Member, including each member of a Joint Venture, of the Phase 1 Proponent; and

- (v) subject to RFP Section 12.2(2), an officer’s certificate in the form of Form 2-4B – Certificate of Officer in Respect of Anti-Racism, Anti-Discrimination, Anti-Harassment and Anti-Hate Speech for each Proponent Prime Team Member, including each member of a Joint Venture, of the Phase 1 Proponent,

in each case, as specified in Part 2 – Forms of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation (the “**Additional Documentation Submission**”).

(2) Each Phase 1 Proponent shall submit each of the Project Experience Submission, Financial Strength Submission and Additional Documentation Submission as its Preliminary Technical Assessment Submission in accordance with the requirements and instructions set out in Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP.

#### **4.2 Submission of Preliminary Technical Assessment Submission**

(1) Each Phase 1 Proponent shall submit its Preliminary Technical Assessment Submission as soon as practicable following the date of this RFP and by no later than the Preliminary Technical Assessment Submission Outside Date. For the purposes of the RFP Process, the determination of whether the Preliminary Technical Assessment Submission is submitted on or before the Preliminary Technical Assessment Submission Outside Date shall be based on the time and date stamp the Phase 1 Proponent receives from the Phase 1 Electronic Submission and Evaluation System for its submission in the Phase 1 Submission Portal and as identified in the RFP Data Sheet. A Preliminary Technical Assessment Submission received after the Preliminary Technical Assessment Submission Outside Date, as documented by the electronic time and date stamp, shall not be considered by the Sponsors.

(2) Phase 1 Proponents shall submit their Preliminary Technical Assessment Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Phase 1 Proponent to ensure that the Preliminary Technical Assessment Submission is received by Infrastructure Ontario prior to the Preliminary Technical Assessment Submission Outside Date and to ensure it receives a date and time stamp receipt from the Phase 1 Electronic Submission and Evaluation System confirming its timely delivery. The Sponsors will not accept Preliminary Technical Assessment Submissions delivered by electronic mail or any other alternative method of delivery.

(3) Phase 1 Proponents shall provide electronic copies of Preliminary Technical Assessment Submissions in the formats specified in Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP.

(4) If there is any difference whatsoever between the electronic copies of the Preliminary Technical Assessment Submission in PDF format and native file format of such Preliminary Technical Assessment Submission submitted through the Phase 1 Submission Portal, the copy of the Preliminary Technical Assessment Submission in the PDF format submitted through the Phase 1 Submission Portal shall govern.

#### **4.3 Withdrawal of Preliminary Technical Assessment Submission**

(1) A Phase 1 Proponent may withdraw its Preliminary Technical Assessment Submission using the Phase 1 Submission Portal before the earlier to occur of (a) the Proponent receiving an RFP Ineligibility Notice or an RFP Eligibility Notice from the Sponsors in accordance with Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP, and (b) the Preliminary Technical Assessment Submission Outside Date.

#### **4.4 Amendment of Preliminary Technical Assessment Submission**

(1) Except as otherwise permitted pursuant to RFP Section 4.5(3), a Phase 1 Proponent may only amend its Preliminary Technical Assessment Submission after it is submitted before the Proponent receives an RFP Ineligibility Notice or an RFP Eligibility Notice from the Sponsors in accordance with Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP and if the Preliminary Technical Assessment Submission is resubmitted on or before the Preliminary Technical Assessment Submission Outside Date in accordance with the following:

- (a) the Phase 1 Proponent shall withdraw its original Preliminary Technical Assessment Submission by using the Phase 1 Submission Portal before the Preliminary Technical Assessment Submission Outside Date; and
- (b) the Phase 1 Proponent shall submit a revised replacement Preliminary Technical Assessment Submission in accordance with the RFP Documents and on or before the Preliminary Technical Assessment Submission Outside Date in accordance with the requirements of RFP Section 4.2.

#### **4.5 Evaluation of Preliminary Technical Assessment Submissions and Eligibility Notifications**

(1) The Sponsors shall evaluate each Preliminary Technical Assessment Submission in accordance with Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP. Following the evaluation of a Preliminary Technical Assessment Submission, the Sponsors shall provide each Phase 1 Proponent who submitted the Preliminary Technical Assessment Submission with either an RFP Eligibility Notice or an RFP Ineligibility Notice in accordance with Schedule 2 - Preliminary Technical Assessment Submissions and Evaluation to this RFP.

(2) Upon receipt of an RFP Eligibility Notice, the Phase 1 Proponent who submitted the Preliminary Technical Assessment Submission shall automatically and immediately become a Phase 2 Proponent under this RFP and any RFP Ineligibility Notice previously issued to such Proponent shall be deemed to be withdrawn.

(3) If a Phase 1 Proponent receives an RFP Ineligibility Notice before the Preliminary Technical Assessment Submission Outside Date, the Proponent may, on or before the Preliminary Technical Assessment Submission Outside Date, correct any issues with the Preliminary Technical Assessment Submission identified by the Sponsors in the RFP Ineligibility Notice and submit *de novo* a new Preliminary Technical Assessment Submission to the Sponsors pursuant to this RFP that, amongst other things, reflects the correction of such issues. For the purposes of this RFP, any such new Preliminary Technical Assessment Submission shall be deemed to be the original Preliminary Technical Assessment Submission submitted pursuant to this RFP.

(4) Upon (a) the Preliminary Technical Assessment Submission Outside Date, for any Phase 1 Proponent who has not submitted, pursuant to RFP Section 4.5(3) or otherwise, a Preliminary Technical Assessment Submission on or prior to such date; or (b) the date a Phase 1 Proponent receives an RFP Ineligibility Notice from the Sponsors after the Preliminary Technical Assessment Submission Outside Date, for a Phase 1 Proponent who submitted a Preliminary Technical Assessment Submission on or prior to such date, as applicable, the Phase 1 Proponent shall automatically and immediately:

- (i) no longer be permitted to participate in this RFP Process;
- (ii) not be permitted to acquire any rights under the RFP; and
- (iii) no longer be permitted to access the Phase 1 Data Room or the Phase 1 Submission Portal.

#### **4.6 Reporting and Review of Material Changes**

(1) Each Proponent has an ongoing obligation at all times to report any material change to any information provided in its Preliminary Technical Assessment Submission, including any information provided in respect of Part B – Financial Strength Documentation of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation, any information contained in any officer’s certificate, the Preliminary Technical Assessment Submission Form, or any other document submitted in connection with the Phase 1 RFP Process.

(2) If there are any material changes to any information provided in a Proponent’s Preliminary Technical Assessment Submission, the Proponent shall immediately provide details of such changes in accordance with any requirements the Sponsors may impose, in their sole discretion, at that time. If a Proponent fails to respond to the Sponsors request for updated information, the Sponsors may, in their sole discretion, disqualify the Proponent.

### **SECTION 5 – DRAFT DESIGN AGREEMENTS SUBMISSION AND ASSIGNMENT OF PROJECT DOCUMENTS**

#### **5.1 Draft Design Agreements Submission and Assignment of Project Documents**

(1) The Sponsors wish to review each Phase 2 Proponent’s Draft Design Agreements that the Proponent intends to enter into on or before DPA Close were the Proponent to be identified as the Preferred Proponent under this RFP pursuant to RFP Section 10.1 in order to ensure that the Preferred Proponent’s Design Agreements will comply with RFP Section 11.2(1)(d).

(2) The Draft Design Agreements and the Design Agreements must satisfy the requirements set out in the RFP Data Sheet.

(3) Each Phase 2 Proponent shall submit its Draft Design Agreements and related documentation described in the RFP Data Sheet to the Sponsors on or before the Draft Design Agreements Submission Deadline (the “**Draft Design Agreements Submission**”).

(4) Phase 2 Proponents shall submit their Draft Design Agreements Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the

Draft Design Agreements Submission is received by the Sponsors prior to the Draft Design Agreements Submission Deadline.

(5) The Sponsors will review the Draft Design Agreements Submissions, and, subject to RFP Sections 3.8.1, 3.8.4 and 3.8.5, will retain each Draft Design Agreement as strictly confidential. Nothing in the Draft Design Agreements Submission shall be or shall be deemed to be part of a Phase 2 Proponent's Proposal and shall not be evaluated under this RFP.

(6) The Sponsors may, in their sole discretion, provide written conformance feedback to the Phase 2 Proponent on its Draft Design Agreements Submission before the expiry of the date for such feedback set out in the RFP Data Sheet. In the event that any such written conformance feedback is provided to the Proponent:

- (a) without limiting any requirement set out in this RFP whatsoever, including the requirements that the Draft Design Agreements and the Design Agreements must satisfy set out in the RFP Data Sheet, the Proponent shall use commercially reasonable efforts to reflect such feedback into its Draft Design Agreements;
- (b) no part of the evaluation of its Proposal will be based on such feedback; and
- (c) none of the Proponent, any Proponent Team Member or any of their respective Advisors or representatives shall rely on such feedback for any purpose, including as being determinative of an evaluation outcome under this RFP or for any other purpose in connection with the RFP, the Development Phase Agreement, the Project or otherwise.

(7) The Phase 2 Proponent acknowledges that:

- (a) it will be required to submit an updated version of its Draft Design Agreements Submission as part of its Technical Submission in accordance with Part 1 of Schedule 5 of this RFP;
- (b) in the Proposal Submission Form, it will be required to confirm that the Draft Design Agreements submitted as part of its Technical Submission will be fully executed on or before DPA Close;
- (c) subject to the results of any negotiations carried out in accordance with RFP Section 10.1 and to RFP Section 11.2, the Proponent shall not be permitted to modify the Draft Design Agreements following the Submission Deadline without the written consent of the Sponsors; and
- (d) if the Proponent is identified as the Preferred Proponent under this RFP, it shall be required to execute and deliver the Assignment of Project Documents in accordance with RFP Section 11.2.



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## **SECTION 6 – PROPOSAL – FORM AND CONTENT REQUIREMENTS**

### **6.1 Format and Content of the Proposal**

- (1) Phase 2 Proponents shall submit Proposals organized in accordance with and in the format set out in Schedules 5 to 8 to this RFP.
- (2) Phase 2 Proponents shall submit Proposals in the following parts:
  - (a) Part A – The Proposal Submission Form, a Phase 2 Proponent Team Member Declaration (Schedule 7 to this RFP), a Certificate of Officer (Schedule 7A to this RFP) for each Proponent Team Member and an Accounting Firm Letter (Schedule 7B to this RFP) for each Construction Prime Team Member;
  - (b) Part B – Technical Submission consisting of the Technical Submission Information; and
  - (c) Part C – Financial Submission consisting of the Financial Submission Information, including the Price Submission Form (Schedule 8 to this RFP).
- (3) Phase 2 Proponents shall submit each of Parts A, B and C of their Proposals in accordance with the requirements and instructions set out in Schedules 5 to 8 to this RFP.

## **SECTION 7 – SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL**

### **7.1 Submission of Proposal**

- (1) Each Phase 2 Proponent shall submit its Proposal on or before the Submission Deadline. For the purposes of the RFP Process, the determination of whether the Proposal is submitted on or before the Submission Deadline shall be based on the time and date stamp the Proponent receives from the Phase 2 Electronic Submission and Evaluation System for its submission in the Phase 2 Submission Portal identified in the RFP Data Sheet. A Proposal received after the Submission Deadline, in each case as documented by the electronic time and date stamp, shall not be considered by the Sponsors.
- (2) Phase 2 Proponents shall submit their Technical Submissions and Financial Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the Proposal is received by Infrastructure Ontario prior to the Submission Deadline and to ensure it receives a date and time stamp receipt from the Phase 2 Electronic Submission and Evaluation System confirming its timely delivery. The Sponsors will not accept Proposals delivered by electronic mail or any other alternative method of delivery.
- (3) Phase 2 Proponents shall provide electronic copies of Technical Submissions and Financial Submissions in the formats specified in Part 4 of Schedule 5 to this RFP.
- (4) If there is any difference whatsoever between the electronic copies of the Proposal in PDF format and native file format of such Proposal submitted through the Phase 2 Submission Portal, the copy of the Proposal in the PDF format submitted through the Phase 2 Submission Portal shall govern.

## **7.2 Withdrawal of Proposals**

(1) A Phase 2 Proponent may withdraw its Proposal before the Submission Deadline using the Phase 2 Submission Portal.

## **7.3 Amendment of Proposal**

(1) Phase 2 Proponents may amend their Proposals after submission but only if the Proposal is resubmitted on or before the Submission Deadline in accordance with the following:

- (a) the Proponent shall withdraw its original Technical Submission and/or Financial Submission by using the Phase 2 Submission Portal before the Submission Deadline; and
- (b) the Proponent shall submit a revised replacement Proposal in accordance with the RFP Documents and on or before the Submission Deadline in accordance with the requirements of RFP Section 7.1.

## **7.4 Proposal Irrevocability**

(1) Except as provided in RFP Sections 7.5(1) and 7.5(3) and the Phase 2 Proponent's right to withdraw a Proposal before the Submission Deadline, the Proposals shall be irrevocable and shall remain in effect and open for acceptance for 145 days after the Submission Deadline (the "**Proposal Validity Period**") or until DPA Close, whichever occurs first.

## **7.5 Extension of Proposal Validity Period**

(1) If the Sponsors wish to extend the Proposal Validity Period, the Sponsors shall submit a request to extend to those Phase 2 Proponents whose Proposals, in the Sponsors' sole discretion, are still under consideration in the RFP Process. For the purpose of greater clarity, the Sponsors may issue a request to extend the Proposal Validity Period after the Negotiations Proponents or the Preferred Proponent have already been identified. A Phase 2 Proponent may, in its discretion, refuse to extend the Proposal Validity Period in accordance with the following:

- (a) notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proponent's Proposal shall continue to be valid in accordance with the original Proposal Validity Period; and
- (b) if the Sponsors determine that they will be unable to determine the Preferred Proponent or reach DPA Close prior to the expiration of the original Proposal Validity Period, the Sponsors may discontinue the evaluation or consideration of a Phase 2 Proponent or may discontinue negotiations with a Negotiations Proponent or finalization of a Development Phase Agreement, the Design Agreements and the Assignment of Project Documents with a Preferred Proponent if that Proponent has refused the Sponsors' request to extend the Proposal Validity Period and may continue the RFP Process with only those Phase 2 Proponents that have agreed to an extension of the Proposal Validity Period.

(2) In respect of the Preferred Proponent, the Sponsors shall be considered to have accepted the Preferred Proponent's Proposal, including its Financial Submission, prior to the expiration of the Proposal Validity Period if the Signing Parties and the Preferred Proponent reach DPA Close prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable).

(3) Notwithstanding RFP Section 7.5(1), if, during the course of negotiations between a Negotiations Proponent and the Sponsors, the Negotiations Proponent resubmits prices to the Sponsors or agrees to revised terms and conditions of the Development Phase Agreement, any of the Design Agreements or the Assignment of Project Documents, or the Negotiations Proponent's Proposal prior to the expiration of the Proposal Validity Period, that Negotiations Proponent is deemed to have agreed to an extension of the Proposal Validity Period for the Negotiations Proponent's amended Proposal for an additional period of 95 calendar days after the date of the Proponent's submission to the Sponsors of the revised prices or revised terms and conditions, as applicable. For clarity, notwithstanding the submission by a Negotiations Proponent or Preferred Proponent of an amended Proposal in accordance with this RFP Section 7.5(3), the Proponent's original Proposal continues to exist in accordance with the original Proposal Validity Period.

## **7.6 Exclusivity Arrangements**

(1) No Proponent shall, at any time during the RFP Process, enter into exclusivity arrangements in respect of this RFP Process, the Development Phase Agreement or the Project with any of the persons listed in the RFP Data Sheet ("**Non-Exclusive Parties**").

## **SECTION 8 – EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS**

### **8.1 Evaluation Committee and Advisors**

(1) The Sponsors will establish an evaluation committee (the "**Evaluation Committee**") for the purpose of evaluating Proposals in accordance with the RFP Documents. The Sponsors, in their sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the Sponsors' Advisors and any other employees or representatives of the Sponsors in any manner determined necessary or desirable by the Sponsors.

(2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments, evaluation outcomes, weightings and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the Sponsors.

### **8.2 Sponsors' Clarification and Verification of Proposals**

(1) The Sponsors may:

- (a) require the Phase 2 Proponent to clarify or verify the contents of its Proposal or any statement made by the Proponent, including at any Commercially Confidential Meeting or at any Proponent Interview;
- (b) require the Phase 2 Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal or any statement made by the Proponent, including at any Commercially Confidential Meeting or at any Proponent Interview; and
- (c) seek a Phase 2 Proponent's acknowledgement of the Sponsors' interpretation of the Proposal or any part of the Proposal.

(2) The Sponsors are not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Phase 2 Proponent, including any ambiguity in a Proposal or in a statement made by a Proponent, including at any Commercially Confidential Meeting or at any Proponent Interview.

(3) Any written information received by the Sponsors from a Phase 2 Proponent pursuant to a request for clarification or verification from the Sponsors as part of the RFP Process may, in the Sponsors' sole discretion, be considered as an integral part of the applicable Proposal.

### 8.3 Determination of Compliance

(1) For purposes of this RFP, a Proposal is "**non-compliant**" and does not "**comply**" or achieve "**compliance**" with the requirements of the RFP Documents if that Proposal contains a "**Material Deviation**". A Material Deviation is any failure in a Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsors:

- (a) impedes, in any material way, the ability of the Sponsors to evaluate the Proposal;
- (b) constitutes an attempt by the Phase 2 Proponent to revise the Sponsors' or the Proponent's rights or obligations under the RFP Documents or affects the Sponsors' ability to enforce the Proponent's obligations pursuant to the RFP Documents in a way not permitted by this RFP; or
- (c) constitutes an attempt by the Phase 2 Proponent to revise the Sponsors' or the Proponent's rights or obligations under the Development Phase Agreement, the Design Agreements or the Assignment of Project Documents.

(2) A requirement in either this RFP or in the Schedules to this RFP that a Proponent "must" or "shall" do anything is not intended to supersede the concepts of "comply", "compliance" or "Material Deviation" or any other portion of this RFP Section 8.3.

(3) Each Proponent acknowledges and agrees that the Sponsors' evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsors may waive:

- (a) any deviation that is not a Material Deviation at any time; and
- (b) any Material Deviation in accordance with RFP Section 12.3(3).

(4) The Sponsors may identify a Material Deviation in a Proposal at any time during the RFP Process (after the Submission Deadline) and, for clarity, at any step during the evaluation process set out in RFP Section 8.5.

(5) Subject to RFP Section 8.3(3)(b), if the Sponsors determine that a Proposal is non-compliant in accordance with RFP Section 8.3, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare that the Proposal shall not be given any further consideration and take such action as permitted under RFP Section 9.1.2. If a declaration by the Sponsors that a Proposal is non-compliant occurs after the commencement of the assignment of evaluation outcomes, the weighting or the scoring of that Proposal, any evaluation outcomes, weighting and scores given to that Proposal shall be declared null and void.

#### **8.4 Non-Compliance Distinguished from Poor Quality**

(1) A Proposal that contains a poor quality response and/or a failure to conform to a requirement of the RFP Documents shall not be deemed to be non-compliant and such poor quality response and/or failure to conform shall not be deemed to be a Material Deviation unless, and only unless, such poor quality response and/or failure to conform to the requirement of the RFP Documents, in the sole discretion of the Sponsors, meets the definition of a Material Deviation as set out in RFP Section 8.3(1) above.

(2) A technical compliance/conformance review is only a tool to assist in the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of the Technical Submissions. Notwithstanding the similarity of terminology, the determination of whether a Proposal, in its entirety, is compliant or non-compliant with the requirements of the RFP Documents is not the same as the concept of “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality made during the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of a Proposal.

(3) The quality of a Proposal, an assessment of which is made during the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of that Proposal and which is separate and distinct from the assessment of the compliance of a Proposal, may be subject to one or more minimum weighting and scoring thresholds in accordance with Part 4 to Schedule 5 to this RFP.

(4) A Proposal that does not contain any Material Deviations shall not be automatically presumed to be assigned any applicable evaluation outcome or to pass any applicable minimum weighting or scoring threshold set out in Part 4 to Schedule 5 to this RFP. Any assessment of “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality of a Proposal shall not result in any presumed evaluation outcome, weighting or score for that Proposal.

(5) The submission of a compliant Proposal that contains a poor quality response and/or any failure by a Phase 2 Proponent to conform with any requirement of the RFP Documents which is not Material Deviation does not derogate from the obligations of the Preferred Proponent pursuant to Section 11.2 of this RFP to bring all aspects of a Phase 2 Proponent’s Proposal into conformance with the requirements of the Development Phase Agreement, pursuant to its terms, and will not limit any obligation of Dev Co to comply with the terms of the Development Phase Agreement.

## **8.5 Steps in the Evaluation Process**

### **8.5.1 Step 1 – Compliance of Technical Submission**

(1) In Step 1 of the evaluation process, the Sponsors will open each Technical Submission and will review the contents of the Technical Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.

(2) If the Sponsors identify a Material Deviation in a Technical Submission then, subject to RFP Section 8.3(3)(b), the Sponsors may determine that the Proposal to which the Technical Submission relates is non-compliant in accordance with RFP Section 8.3 and take such action as described in RFP Section 8.3(5).

(3) In the event that the Sponsors declare a Proposal to be non-compliant before the opening of the Financial Submission, then the unopened submission(s) will remain unopened and will not be evaluated.

### **8.5.2 Step 2 – Review of the Proposal Submission Form**

(1) In Step 2 of the evaluation process, the Sponsors shall review the Proposal Submission Form to:

- (a) ensure that there have been no changes to the Phase 2 Proponent or Identified Proponent Parties from the Proponent's Preliminary Technical Assessment Submission, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.6; and
- (b) assess the Conflict of Interest and Confidential Information sections of the Proposal Submission Form.

### **8.5.3 Step 3 – Review, Weighting and Scoring of the Technical Submissions**

(1) In Step 3 of the evaluation process, the Technical Submissions will be evaluated, assigned evaluation outcomes, weighted and scored in accordance with Parts 1 and 4 of Schedule 5 to this RFP.

(2) If a Phase 2 Proponent fails to achieve any minimum aggregate weighting threshold or any minimum score as set out in the applicable provisions of Part 4 of Schedule 5 to this RFP, then, as part of Step 3 of the evaluation process, the Sponsors may, in their sole discretion, determine whether that Proponent's Proposal will continue to be considered in the RFP Process.

(3) In the event that the Sponsors declare a Proposal to be non-compliant and declare that it shall not be further considered before the opening of the Financial Submission, the Financial Submission of that Phase 2 Proponent will remain unopened and will not be evaluated.

### **8.5.4 Step 4 – Compliance of Financial Submissions**

(1) In Step 4 of the evaluation process, the Sponsors will open each Financial Submission and will review the contents of the Financial Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.

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(2) If the Sponsors identify a Material Deviation in a Financial Submission then, subject to RFP Section 8.3(3)(b), the Sponsors may determine that the Proposal to which the Financial Submission relates is non-compliant in accordance with RFP Section 8.3 and take such action as described in RFP Section 8.3(5).

#### **8.5.5 Step 5 – Review and Scoring of the Financial Submissions**

(1) In Step 5 of the evaluation process, the Financial Submissions will be evaluated and scored in accordance with Part 4 of Schedule 5 to this RFP.

#### **8.5.6 Step 6 – Establishing a Final Proposal Score**

(1) For the purpose of the evaluation process, the following will apply:

- (a) any Proponent Interviews; and
- (b) the scoring set out in Part 4 of Schedule 5 to this RFP.

(2) In Step 6 of the evaluation process, upon receipt and acceptance by the Evaluation Committee of the results of the evaluation process and finalization of the scores of all Phase 2 Proponents' Proposals, as may be adjusted as a result of any Proponent Interviews conducted by the Sponsors, the score for each Proposal will be tallied and finalized.

(3) The score established for each Proposal based on RFP Section 8.5.6(1) shall be the “**Final Proposal Score**”.

#### **8.5.7 Step 7 – Ranking the Proponents**

(1) In Step 7 of the evaluation process, the Evaluation Committee shall rank only those Phase 2 Proponents that have been evaluated and passed through Steps 1 through 6 of the evaluation process and shall base the ranking on the Final Proposal Score determined in Step 6.

(2) In the event of a tie in the Final Proposal Score between two Phase 2 Proponents the Sponsors may, in their sole discretion, give the higher ranking to the Proponent who obtained the highest score on its Technical Submission.

### **8.6 Proponent Interviews**

(1) Without limiting the provisions of RFP Section 8.2, the Sponsors, may in their sole discretion and as set out in the RFP Data Sheet, elect to conduct interviews of some or all of the Phase 2 Proponents (“**Proponent Interviews**”). In the event that the Sponsors elect to conduct Proponent Interviews, the Sponsors may, in their sole discretion:

- (a) determine the number of Phase 2 Proponents to be interviewed;
- (b) determine the content and length of the Proponent Interviews;
- (c) request specific individuals from the Phase 2 Proponents, including Key Individuals and other individuals from any or all Proponent Team Members, be present at the Proponent Interview; and

- (d) clarify or verify the contents of a Phase 2 Proponent’s Proposal and consider any information received by the Sponsors from a Phase 2 Proponent during a Proponent Interview. Any information received during a Proponent Interview may, in the Sponsors’ sole discretion, constitute an integral part of the Proposal, even if such information should have been submitted as part of the Phase 2 Proponent’s Proposal. Information received during a Proponent Interview may, in the Sponsors’ sole discretion, be taken into account in the evaluation of the Phase 2 Proponent’s Proposal, including to reassess the presumptive scoring of the Proposal in accordance with Part 4 of Schedule 5 to this RFP.

(2) Without limiting RFP Section 8.6(1), the Sponsors may, in their sole discretion and in advance of a Proponent Interview, provide to each Phase 2 Proponent selected for a Proponent Interview any one or more of the following:

- (a) instructions and details with respect to the Proponent Interview;
- (b) a specific list of questions about the Proponent’s Proposal; and
- (c) a request for the Phase 2 Proponent to present all or certain portions of its Proposal to the Sponsors at the Proponent Interview, with or without presentation materials.

(3) The Sponsors shall only notify those Phase 2 Proponents who have been identified by the Sponsors for a Proponent Interview.

## **SECTION 9 – GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS**

### **9.1.1 Sponsors’ Discretion in Determining Compliance, Evaluation Outcomes, Scoring and Ranking**

- (1) The Sponsors shall, in their sole discretion, determine:
  - (a) whether or not to issue an RFP Eligibility Notice or an RFP Ineligibility Notice to a Phase 1 Proponent;
  - (b) the number of Phase 1 Proponents who will be entitled to receive RFP Eligibility Notices;
  - (c) the membership of the Evaluation Committee and Phase 1 Evaluation Teams and any sub-committees of the Evaluation Committee or Phase 1 Evaluation Teams;
  - (d) whether a Preliminary Technical Assessment Submission, Draft Design Agreement or a Proposal is compliant with the RFP Documents;
  - (e) whether a Phase 1 Proponent, Proponent Prime Team Member or Proponent Team Member is disqualified;
  - (f) whether a failure to comply constitutes a Material Deviation;
  - (g) whether any Key Individuals are unacceptable to the Sponsors;
  - (h) the Final Proposal Score of a Proposal;



- (i) the rankings of the Proposals; and
- (j) whether a Preliminary Technical Assessment Submission, Proposal or a Phase 2 Proponent
  - (i) is disqualified; or
  - (ii) will cease to be considered in the evaluation process.

(2) The Sponsors' discretion in determining compliance, evaluation outcomes, weightings, scores, ranking and disqualification of the Phase 2 Proponents and their Proposals is not limited or restricted in any way by the fact that a Preliminary Technical Assessment process and a Draft Design Agreements Submission process preceded the submission of their Proposals.

(3) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of the Proposals or in the exercise of any of the Sponsors' rights under this RFP:

- (a) any instances of poor performance by a Phase 2 Proponent or any of its Proponent Team Members that the Sponsors have experienced, including in the Phase 1 RFP Process; and/or
- (b) any publicly available information about a Phase 2 Proponent or any of its Proponent Team Members that is, in the Sponsors' sole discretion, credible information.

(4) Pursuant to the page limit restrictions applicable to any portion of a Proposal as described in this RFP, the Sponsors shall, without discretion, not review, assign an evaluation outcome or weighting to or score any pages of a Proposal that exceed the maximum number of pages specified for the applicable portion of the Proposal.

#### 9.1.2 Disqualification

(1) The Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member, a Preliminary Technical Assessment Submission or a Proposal or reverse their decision to issue an RFP Eligibility Notice (even if the RFP Eligibility Notice has already been issued to a Phase 2 Proponent under this RFP) or make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to DPA Close, if:

- (a) a Preliminary Technical Assessment Submission is determined to be non-compliant with the requirements of this RFP;
- (b) the Proposal is determined to be non-compliant pursuant to RFP Section 8.3;
- (c) a Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its Preliminary Technical Assessment Submission or Proposal or in a Proponent Interview;
- (d) the Proponent contravenes RFP Section 3.3.2 or RFP Section 3.3.3;

- (e) the Proponent fails to comply with Applicable Law;
- (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act or a Restricted Person as defined in subparagraph (a) of the definition of Restricted Person has, directly or indirectly, an Economic Interest in any of them;
- (g) the Proponent, any Proponent Team Member, any of their identified subcontractors, or any of their directors, officers, employees or Affiliates is a Restricted Person;
- (h) the Preliminary Technical Assessment Submission or the Proposal, including any officer's certificate or any form attached to the Preliminary Technical Assessment Submission or the Proposal, contains false or misleading information or a misrepresentation;
- (i) the Proponent or any Proponent Team Member fails to disclose any information (including in any officer's certificate or any other form attached to the Proposal in connection with this RFP) that would materially adversely affect the Sponsors' evaluation of the Preliminary Technical Assessment or the Proposal;
- (j) the Preliminary Technical Assessment or the Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Proponent does not receive a waiver from the Sponsors in accordance with RFP Section 3.9.1(6) or does not receive a consent in accordance with RFP Section 3.9.2(4), as applicable, or fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
- (k) in the 36 months prior to the Submission Deadline, the Sponsors became aware that the Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor, unless the Proponent has demonstrated to the satisfaction of the Sponsors that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (l) if, in the opinion of the Sponsors, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Preliminary Technical Assessment or Proposal or otherwise contravened RFP Section 3.3.4;
- (m) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (n) the Proponent or any Proponent Team Member has been convicted of an offence in connection with, or any services rendered to the Sponsors or any Ministry, agency, Board or Commission of the Government of Ontario;

- (o) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (p) the Proponent or any Proponent Team Member has an economic or other interest or relationship that:
  - (i) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
  - (ii) could potentially compromise the Sponsors' reputation or integrity or the Sponsors' procurement process, so as to affect public confidence in that process,

whether or not such interest creates a Conflict of Interest.

## **SECTION 10 – COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED PROPONENT**

### **10.1 Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponents**

(1) Based on the Final Proposal Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the Proposal Validity Period:

- (a) identify the highest ranked Phase 2 Proponent as the Preferred Proponent and either negotiate with such Proponent or accept such Proponent's Proposal as submitted;
- (b) identify the two highest ranking Phase 2 Proponents as the first negotiations proponent (the "**First Negotiations Proponent**") (highest ranked) and the second negotiations proponent (the "**Second Negotiations Proponent**") (second highest ranked) (collectively, the "**Negotiations Proponents**") and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Phase 2 Proponent with whom the Sponsors conclude successful negotiations as the Preferred Proponent; or
- (c) enter into separate and distinct but contemporaneous negotiations with the First and Second Negotiations Proponents and identify a Preferred Proponent as a result of those negotiations.

(2) The Sponsors may use the negotiations process to negotiate any aspect of a Negotiations Proponent's Proposal, the Development Phase Agreement, or both, including, for greater clarity, any amendments to the Development Phase Agreement that are reasonably required to:

- (a) revise the scope of the Project in the event that all Proposal prices have exceeded the Sponsors' Project budget;

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- (b) address such other matters as may be specified in the RFP Data Sheet;
- (c) ensure that a Negotiations Proponent's Proposed DPA Works Schedule meets the applicable requirements set out in the Development Phase Agreement;
- (d) ensure that a Negotiations Proponent's Draft Design Agreements meet the requirements of the Development Phase Agreement, including DPA Section 10.7 of the Development Phase Agreement; and/or
- (e) satisfy the Sponsors with respect to the current status of a Negotiations Proponent's health and safety certifications, provided in accordance with Part 1 to Schedule 5 to this RFP.

(3) Except as provided in RFP Section 7.5(3), notwithstanding any negotiations between the Sponsors and a Negotiations Proponent, the Proposals of all Phase 2 Proponents shall remain valid and irrevocable until the expiration of the Proposal Validity Period or until DPA Close, in accordance with RFP Section 7.4(1).

(4) If, in accordance with RFP Sections 10.1(1)(b) or (c) the Proponent and the Sponsors negotiate revisions to the Development Phase Agreement, the Sponsors and the Preferred Proponent shall develop a revised Development Phase Agreement and, for the purposes of RFP Section 11, the revised Development Phase Agreement shall be the "**Development Phase Agreement**".

(5) The Sponsors may, in their sole discretion and for greater clarity, elect to change the selection of which of the RFP Section 10.1(1) negotiations processes to employ at any time during the application of RFP Section 10.

## **10.2 Advance DPA Works**

### **10.2.1 General**

(1) Each Proponent acknowledges that, following DPA Close, the rapid and effective progress of the DPA Works under the Development Phase Agreement is of paramount importance to the Sponsors.

(2) For the purposes of this RFP Section 10.2, any reference to the First Negotiations Proponent shall, if and when applicable under this RFP, also be a reference to the Preferred Proponent.

(3) Without limiting any right of the Sponsors under this RFP, the First Negotiations Proponent shall, within five Business Days of receiving written notice from the Sponsors, commence performing certain DPA Works and related activities forming part of the DPA Works described in and in accordance with Schedule 12 – Advance DPA Works to this RFP (the "**Advance DPA Works**") and shall continue performing such Advance DPA Works during the Pre-Closing Work Period and following DPA Close under the Development Phase Agreement. For clarity, upon DPA Close, the Advance DPA Works shall be deemed to be DPA Works performed under and subject to the Development Phase Agreement.

(4) The Sponsors shall, at any time during the Pre-Closing Work Period, have the right to require, by the provision of written notice to the First Negotiations Proponent, that the First Negotiations Proponent and its Proponent Team Members suspend or cease performing the Advance DPA Works. The

First Negotiations Proponent and its Proponent Team Members shall immediately comply with any such notice upon receipt.

(5) During the performance of the Advance DPA Works, the First Negotiations Proponent shall comply with any and all reasonable terms, conditions and restrictions of the Sponsors in respect of the performance of such work prior to DPA Close, including providing the Sponsors with proof of the obtainment and maintenance of any insurance required by the Development Phase Agreement related to the performance of such work in addition to the insurance set out in RFP Section 3.11.

#### 10.2.2 Advance DPA Works Costs

(1) The First Negotiations Proponent shall:

- (a) subject to RFP Section 10.2.2(2), be solely responsible for all of the costs and expenses the First Negotiations Proponent and its Proponent Team Members incur in performing the Advance DPA Works (the “**Advance DPA Works Costs**”);
- (b) ensure that the First Negotiations Proponent’s proposed Total DPA and Design Works Fixed Price submitted as part of its Financial Submission includes all of the costs and expenses of performing the Advance DPA Works, whether performed during the Pre-Closing Work Period or on and following DPA Close; and
- (c) for greater certainty, the First Negotiations Proponent’s proposed Total DPA and Design Works Fixed Price submitted as part of its Financial Submission shall not be adjusted as a result of the performance of any Advance DPA Works.

(2) In the event that the Sponsors cancel the RFP Process pursuant to RFP Section 12.1(1)(e) or RFP Section 12.1(1)(h), as applicable:

- (a) unless otherwise directed by the Sponsors, the First Negotiations Proponent and its Proponent Team Members shall immediately cease performing the Advance DPA Works;
- (b) the First Negotiations Proponent shall promptly provide a proper invoice to the Sponsors setting out:
  - (i) the reasonable direct Advance DPA Works Costs incurred by the First Negotiation Proponent and its Proponent Team Members in performing the Advance DPA Works;
  - (ii) without duplication, a reasonable amount on account of overhead and profit related to such work;
  - (iii) any applicable HST; and
  - (iv) evidence and proper supporting documentation in respect of such matters (such as invoices, proof of payment, and detailed hourly rate information) reasonably satisfactory to the Sponsors; and

- (c) subject to Applicable Law, the Client shall pay the First Negotiations Proponent the amounts set out in such proper invoice within 28 days of the delivery of such proper invoice to the Sponsors.

## **SECTION 11 – PREFERRED PROPONENT**

### **11.1 Identification of the Preferred Proponent**

(1) Subject to RFP Sections 12.1, 12.2 and 12.3 the Sponsors intend to identify a Preferred Proponent in accordance with RFP Section 10.1.

(2) By no later than the date that is three Business Days following the date the Sponsors identify the Preferred Proponent in accordance with RFP Section 10.1, the Preferred Proponent shall deliver or cause the delivery of the DPA Letter of Credit to the Sponsors.

### **11.2 Preferred Proponent Obligations**

(1) The Preferred Proponent shall:

(a) achieve DPA Close,

(i) on or before the DPA Close Target Date; or

(ii) if the DPA Close Target Date has passed and the Sponsors have given their consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable),

based on the Development Phase Agreement and the Assignment of Project Documents in substantially the same form and content as finalized prior to the Submission Deadline or on the Development Phase Agreement or the Assignment of Project Documents as revised and agreed to by the Proponent and the Sponsors;

(b) execute and deliver the Development Phase Agreement and the Assignment of Project Documents, subject only to revision in respect of the following:

(i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;

(ii) changes, additions and modifications to those provisions which require

A. the insertion or addition of information relating to the Preferred Proponent's corporate structure (including partnership structure) which are not inconsistent with the principles set out in the Development Phase Agreement and the Assignment of Project Documents;

B. the insertion or addition of information or the modification of provisions of the Development Phase Agreement and the Assignment of Project Documents required in order to reflect

accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or

- C. the revision of provisions in the Development Phase Agreement and the Assignment of Project Documents to more accurately reflect the result of negotiations in accordance with RFP Section 10.1;
- (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Development Phase Agreement or the Assignment of Project Documents (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Development Phase Agreement or the Assignment of Project Documents; and
- (iv) changes, additions and modifications to those parts of the Development Phase Agreement and the Assignment of Project Documents which are indicated in such agreements as being subject to completion or finalization,

provided, that, in each case the changes, additions or modifications identified in RFP Section 11.2(1)(b) are consistent with the principles set out in the Development Phase Agreement and the Assignment of Project Documents, are consistent with RFP Sections 10.1(4) and 11.2(3)(a), and are otherwise acceptable to the Sponsors, acting reasonably;

- (c) maintain its prices in accordance with the terms and conditions of this RFP, subject only to revisions to any of the prices explicitly agreed to by the Sponsors;
- (d) no fewer than 15 Business Days prior to the DPA Close Target Date, deliver or cause the delivery of, the draft execution forms of the Initial DPA Subcontracts other than the Draft Design Agreements to the Sponsors, each in a form that satisfies the applicable requirements set out in the Development Phase Agreement, including DPA Section 10.7 of the Development Phase Agreement; and
- (e) on or before the DPA Close Target Date, deliver or cause the delivery of the documents set out in Schedule 11 – Preferred Proponent Completion Documents to the Sponsors.

(2) The Preferred Proponent shall provide access and shall promptly make available to the Sponsors and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsors from time to time in connection with the Sponsors' due diligence investigations, including any draft or executed contracts and other documents not otherwise provided to the Sponsors pursuant to this RFP that are related to the Project or to be entered into by Dev Co and/or the other Proponent Team Members in respect of the Project. The Preferred Proponent acknowledges and confirms that the Sponsors may request and, upon such request, the Proponent shall promptly provide and make available to the Sponsors, such documentation and

information from the Proponent while it is a Negotiations Proponent and before it is identified as the Preferred Proponent under this RFP.

- (3) The Preferred Proponent acknowledges and agrees that:
  - (a) further to RFP Section 7.4(1), the Sponsors, in their sole discretion, may incorporate certain parts of its Proposal into the Development Phase Agreement as Dev Co Proposal Extracts. Notwithstanding the foregoing, the Sponsors shall act reasonably in incorporating any specific part of the Proposal into the Dev Co Proposal Extracts where the Preferred Proponent demonstrates to the Sponsors that incorporating such part of the Proposal into the Dev Co Proposal Extracts (the “**Specific Proposal Part**”) without also incorporating a related specific part(s) of the Proposal into the Dev Co Proposal Extracts will (i) materially adversely change the intent, or materially prejudice the interpretation, of the Specific Proposal Part or the Development Phase Agreement, as contemplated by the Proposal; or (ii) otherwise materially adversely affect the performance of the DPA Works by Dev Co under the Development Phase Agreement; and
  - (b) save and except for any Dev Co Proposal Extracts, on DPA Close, the RFP Documents and its Proposal will be superseded entirely by the Development Phase Agreement and rendered null and void in accordance with the Development Phase Agreement.

(4) The Preferred Proponent shall be required to deliver executed Assignments of DPA Subcontracts on or prior to DPA Close if, at any time before DPA Close after the Sponsors’ identification of the Preferred Proponent or the First Negotiations Proponent pursuant to RFP Section 10.1(1) (including after the Sponsors’ review of the corporate structure of the Proponent, the Proponent’s approach to subcontracting the DPA Works and the list of Initial DPA Subcontractors and Initial DPA Subcontracts provided by the Proponent as part of its Proposal), the Sponsors, in their sole discretion, determine that they are not satisfied that all material, and in particular all lead, DPA Subcontracts with Initial DPA Subcontractors (including the Design Agreements with the lead members of the Design Team) identified by the Sponsors, in their sole discretion, will be assigned to DPA Contracting Authority pursuant to the Assignment of Project Documents. The Sponsors may, in their sole discretion, revise the form of the Development Phase Agreement (including Schedule 14 – Form of Assignment of DPA Subcontract) prior to DPA Close in the event that they make such determination and the Sponsors are of the opinion that revisions are necessary to facilitate or effect any such execution and delivery of Assignment of DPA Subcontracts. For clarity, after DPA Close, DPA Contracting Authority may, when approving any DPA Subcontract in accordance with the Development Phase Agreement, require the execution and delivery of an Assignment of DPA Subcontract in respect of such DPA Subcontract in accordance with and subject to DPA Section 10.7 of the Development Phase Agreement.

(5) If Dev Co is or is comprised of a person that is a special purpose vehicle or if the Sponsors, in their sole discretion, are otherwise not satisfied with the balance sheet of Dev Co or any person comprising Dev Co or the capacity of any one or more such persons to perform the DPA Works, then, following the delivery of written notice from the Sponsors prior to the DPA Close Target Date, the Preferred Proponent shall be required to execute and deliver one or more Performance Guarantees of DPA Works Guarantors from any one or more DPA Works Guarantors identified by the Sponsors, in their sole discretion, in such notice, in accordance with this RFP and the Development Phase Agreement, including DPA Section 16.2 of the Development Phase Agreement.



### **11.3 The Sponsors – Authorization and Approvals**

(1) The Preferred Proponent acknowledges and agrees that the entering into of the Development Phase Agreement by the Signing Party or Signing Parties is conditional on and subject to the Signing Party or Signing Parties obtaining any necessary authorizations and approvals required in connection with the Development Phase Agreement and the Project, including, for certainty, the approval of any relevant government authority.

## **SECTION 12 – GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT**

### **12.1 General Rights of the Sponsors**

- (1) The Sponsors may, in their sole discretion:
- (a) reject any or all of the Preliminary Technical Assessment Submissions or Proposals, including any Proposal that contains any abnormally low prices, such that, individually or collectively, such prices could not compensate the Proponent for the performance of the DPA Works under the Development Phase Agreement without materially adversely affecting the performance of the DPA Works;
  - (b) reject the Key Individuals proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
  - (c) accept any Preliminary Technical Assessment Submission or Proposal;
  - (d) if only one Preliminary Technical Assessment Submission or Proposal is received, elect to accept or reject it or enter into negotiations with the Proponent;
  - (e) elect to cancel the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before DPA Close;
  - (f) alter the Timetable, the RFP Process or any other aspect of this RFP or the RFP Documents;
  - (g) verify with any Proponent or with a third party any information in a Preliminary Technical Assessment Submission or in a Proposal; and
  - (h) cancel the RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants.

(2) In accordance with RFP Section 6.1(2)(a), each Proponent Team Member of any Phase 2 Proponent is required to provide a certificate of an officer from such Proponent Team Member in the form attached as Schedule 7A – Certificate of Officer to this RFP. In accordance with RFP Section 6.1(2)(a), each Construction Prime Team Member of any Phase 2 Proponent is required to provide an accounting firm letter in the form attached as Schedule 7B – Form of Accounting Firm Letter to this RFP from a professional accounting and advisory firm that is reputable in the applicable jurisdiction with expertise in forensic reviews dated no earlier than two years prior to the RFP issuance date. Such accounting firm letter will be reviewed and approved by the Sponsors in their sole discretion. Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and

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transparency of the RFP Process, the Sponsors may, in their sole discretion, require at any time, including any time after a Phase 2 Proponent has submitted its Proposal, that any Proponent Team Member of any Phase 2 Proponent provide or resubmit a certificate of an officer from such Proponent Team Member in the form attached as Schedule 7A – Certificate of Officer to this RFP, or may require any Construction Prime Team Member of any Phase 2 Proponent to provide or resubmit an accounting firm letter in the form attached as Schedule 7B – Form of Accounting Firm Letter to this RFP.

(3) Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion:

- (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures with respect to bidding practices, ethical behaviour or anti-racism, anti-discrimination, anti-harassment (including assault and sexual harassment) and anti-hate speech practices of the Proponents and Proponent Team Members; and
- (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the Sponsors with: (i) copies of its internal policies with respect to anti-racism, anti-discrimination, anti-harassment (including assault and sexual harassment) and anti-hate speech practices; (ii) evidence of its internal expectations practices and processes designed to confront, prevent and address workplace-based racism, harassment, discrimination and hate speech; and (iii) copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.

## **12.2 Anti-Racism, Anti-Discrimination, Anti-Harassment and Anti-Hate Speech**

(1) Each Proponent Prime Team Member of any Proponent is required to provide a certificate of an officer from such Proponent Prime Team Member in the form attached as Form 2-4B – Certificate of Officer in Respect of Anti-Racism, Anti-Discrimination, Anti-Harassment and Anti-Hate Speech of Part 2 – Forms of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP. Without limitation to any other rights of the Sponsors hereunder, to ensure the integrity, openness and transparency of the procurement process, the Sponsors may, in their sole discretion, require at any time, including any time after a Proponent has submitted its Preliminary Technical Assessment Submission or Proposal, that any Proponent Team Member of any Proponent provide or resubmit a certificate of an officer from such Proponent Team Member in the form attached as Form 2-4B – Certificate of Officer in Respect of Anti-Racism, Anti-Discrimination, Anti-Harassment and Anti-Hate Speech of Part 2 – Forms of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP.

(2) If any Proponent Prime Team Member is unable to submit an executed certificate of an officer in the form attached as Form 2-4B – Certificate of Officer in Respect of Anti-Racism, Anti-Discrimination, Anti-Harassment and Anti-Hate Speech of Part 2 – Forms of Appendix A Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP as part of its Preliminary Technical Submission or at the Submission Deadline, the Sponsors reserve the right to require such Proponent Prime Team Member to demonstrate to the Sponsors satisfaction that reasonable efforts are underway to update corporate policies and practices in a

manner that addresses the requirements identified in Section 1(c) of such certificate of officer. Each Proponent Prime Team Member will be required to provide a certificate in the form attached as Form 2-4B – Certificate of Officer in Respect of Anti-Racism, Anti-Discrimination, Anti-Harassment and Anti-Hate Speech of Part 2 – Forms of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP as part of the procurement of the Project. The Sponsors may, in their sole discretion, require the submission of such certificate of officer as a condition to becoming a Phase 2 Proponent or the Preferred Proponent or continuing as a Proponent.

(3) The Sponsors may, in their sole discretion, disqualify a Proponent, or reject a Preliminary Technical Assessment Submission or a Proposal from a Proponent, where the Proponent or any Proponent Team Member has been disqualified from an Infrastructure Ontario procurement process as the result of a decision, conviction, judgment, arbitration award or order rendered by a Canadian court, board, arbitrator or tribunal, or any internal or external investigation report, rendering an adverse finding against the Proponent, any Proponent Team Member, or any of their managers, in relation to allegations of racism, discrimination, harassment (including assault and sexual harassment) and/or hate speech arising under applicable federal or provincial human rights, employment equity, accessibility, occupational health and safety (as it pertains to workplace harassment and violence) or *Criminal Code* legislation or any applicable collective agreement, within the five year period immediately preceding the date of the issuance of these RFP Documents. Furthermore, the Sponsors may reject and not consider a Proponent’s Preliminary Technical Assessment Submission or Proposal or otherwise elect not to proceed further in the procurement process with such Proponent, including after notifying such Proponent of the results of the RFP Process, in the event that the Proponent:

- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to Sections 12.2(1), 12.2(2) and 12.2(3); or
- (b) complies with the Sponsors’ requirements as prescribed in accordance with Sections 12.2(1), 12.2(2) and 12.2(3) but the Sponsors determine that the Proponent, any Proponent Team Member, or any of their managers has or may have engaged in alleged acts of racism, discrimination, harassment (including assault and sexual harassment) and/or hate speech arising under applicable federal or provincial human rights, employment equity, accessibility, occupational health and safety (as it pertains to workplace harassment and violence) or *Criminal Code* legislation or any applicable collective agreement.

(4) The Sponsors may, in their sole discretion, require the Proponent to remove or replace a Proponent Team Member or Identified Proponent Party (including any Key Individual), if the applicable Proponent Team Member has been disqualified or if the Identified Proponent Party has been removed from an Infrastructure Ontario procurement process as the result of a decision, conviction, judgment, arbitration award or order rendered by a Canadian court, board, arbitrator or tribunal, or any internal or external investigation report, rendering an adverse finding against the Proponent Team Member or Identified Proponent Party in relation to allegations of racism, discrimination, harassment (including assault and sexual harassment) and/or hate speech arising under applicable federal or provincial human rights, employment equity, accessibility, occupational health and safety (as it pertains to workplace harassment and violence) or *Criminal Code* legislation or any applicable collective agreement, within the five year period immediately preceding the date of the issuance of the these RFP Documents. Furthermore, the Sponsors have the sole discretion to require the Proponent to remove or replace any

Proponent Team Member or Identified Proponent Party in the event that any Proponent Team Member or Identified Proponent Party:

- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to Sections 12.2(1), 12.2(2) and 12.2(3); or
- (b) complies with the Sponsors' requirement as prescribed in accordance with Sections 12.2(1), 12.2(2) and 12.2(3) but the Sponsors determine that the Proponent Team Member or Identified Proponent Party has or may have engaged in alleged acts of racism, discrimination, harassment (including assault and sexual harassment) and/or hate speech arising under applicable federal or provincial human rights, employment equity, accessibility, occupational health and safety (as it pertains to workplace harassment and violence) or *Criminal Code* legislation or any applicable collective agreement.

### **12.3 Special Circumstances**

(1) If the Sponsors determine that all of the Proposals submitted are non-compliant in accordance with RFP Section 8.3, the Sponsors may, in their sole discretion:

- (a) take any action in accordance with RFP Section 12.1;
- (b) carry out a process whereby all Phase 2 Proponents are directed to correct the Material Deviations in their Proposals for re-submission, without a change in their commercial and financial sections; or
- (c) enter into negotiations with any one or more of the Proponents to attempt to finalize an agreement.

(2) If the Sponsors receive,

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

the Sponsors may, in their sole discretion:

- (c) take any action in accordance with RFP Section 12.1(1); or
- (d) cancel the RFP Process and subsequently enter into negotiations with the Phase 2 Proponent that submitted a compliant Proposal.

(3) The Sponsors, in their sole discretion, may waive a Material Deviation in a Proposal and, therefore, waive a material failure to comply with the requirements of the RFP Documents. The Sponsors may, in their sole discretion, decline to disqualify a non-compliant Proposal.

## **12.4 Sponsors' Liability for Proponent's Costs**

### **12.4.1 General**

(1) Except as provided in RFP Section 10.2.2(2) and RFP Section 12.4.2, none of the Sponsors and the Government of Ontario shall be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Proponent Advisor or any person connected with any one of them, as a result of any action taken by the Sponsors in accordance with RFP Sections 12.1 or 12.2.

### **12.4.2 Proposal Fee**

(1) If the Sponsors specify in the RFP Data Sheet that they offer a Proposal Fee for this Project, such Proposal Fee plus any applicable HST shall be paid by the Sponsors to each Phase 2 Proponent other than the Proponent that achieves DPA Close under the Development Phase Agreement to this RFP, subject to the following conditions:

- (i) a Phase 2 Proponent must submit a full and proper Proposal for that Proponent to be eligible for the Proposal Fee, provided that the Sponsors shall determine whether a Proposal is full and proper based on factors that include whether (A) the Proposal is compliant with this RFP (as determined in accordance with RFP Section 8.3), and (B) each applicable part of the Phase 2 Proponent's Technical Submission received, as applicable, an evaluation outcome or a score greater than or equal to that of the minimum acceptable aggregate weighting threshold or score for such applicable part of the Technical Submission set out in Part 4 of Schedule 5 to this RFP; and
- (ii) a Phase 2 Proponent must not withdraw from this RFP Process after the Submission Deadline in contravention of this RFP.

(2) The amount of the Proposal Fee that will be paid by the Sponsors to each eligible Phase 2 Proponent in accordance with RFP Section 12.4.2(1) is set out in the RFP Data Sheet. Any additional requirements for Phase 2 Proponents to take into consideration in relation to the Proposal Fee are set out in the RFP Data Sheet.

(3) Payment of a Proposal Fee shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Phase 2 Proponent and its Proponent Team Members in connection with this RFP, and the Sponsors' obligation to pay the Proposal Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from the Phase 2 Proponent and its Proponent Team Members to that effect.

## **12.5 Applicable Law, Attornment and Limit on Liability**

- (1) This RFP shall be governed and construed in accordance with Applicable Law.
- (2) The Proponent agrees that
  - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the

Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;

- (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
- (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 12.5.

(3) Notwithstanding that the submission of a Preliminary Technical Assessment Submission is not a tender and is not intended to and does not create a bidding contract or “Contract A”, each Phase 1 Proponent agrees that if any of the Sponsors or the Sponsors’ Advisors is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of the RFP Process, the total liability of the Sponsors to any Phase 1 Proponent, and the aggregate amount of damages recoverable against the Sponsors for any matter relating to or arising from any act or omission by the Sponsors or the Sponsors’ Advisors, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors or the Sponsors’ Advisors, shall be no greater than the Phase 1 Proponent’s cost of preparing its Preliminary Technical Assessment Submission or \$10,000, whichever is less.

(4) Except as provided in RFP Section 10.2.2(2) and RFP Section 12.4.2, each Phase 2 Proponent agrees that if the Sponsors or the Sponsors’ Advisors commit a material breach of their obligations under or in connection with this RFP (that is, a material breach of the bidding contract or “Contract A”), the Sponsors’ liability to the Phase 2 Proponent and the aggregate amount of damages recoverable against the Sponsors for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors, shall be the lesser of

- (a) the Proposal preparation costs that the Phase 2 Proponent seeking damages from the Sponsors can demonstrate; and
- (b) \$500,000 or the Proposal Fee, if applicable, whichever is greater.

## **12.6 Licences, Permits, etc.**

(1) If a Phase 2 Proponent is required by Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal or in the Development Phase Agreement, neither acceptance of the Proposal nor execution of the Development Phase Agreement by the Sponsors shall be considered to be approval by the Sponsors of carrying on such activity without the requisite licence, permit, consent or authorization.

## **12.7 Power of Legislative Assembly**

(1) Proponents are advised that no provision of the RFP Documents (including a provision stating the intention of the Sponsors) is intended to operate, nor shall any such provision have the effect

of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

## **SECTION 13 – NOTIFICATION AND DEBRIEFING**

(1) Any time after the Preferred Proponent has been identified, the Sponsors will formally notify all Phase 2 Proponents who were not successful in the RFP Process that they have not been selected. Notwithstanding such notification, the Phase 2 Proponents' Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or DPA Close, in accordance with RFP Section 7.4.

(2) Any time after DPA Close, the Sponsors, and a member or members of the Evaluation Committee will meet with any unsuccessful Phase 2 Proponents, at the request of the unsuccessful Proponent, to provide a debriefing.

## **SECTION 14 – DEFINITIONS**

### **14.1 General**

(1) Unless otherwise defined in this RFP Section 14, capitalized terms and expressions used in this RFP have the meanings given to them in the Development Phase Agreement (including through incorporation by reference of certain provisions from the Draft Project Agreement). In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

(2) Any reference in this RFP 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.

(3) Unless otherwise specified in this RFP, any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

(4) All references in this RFP to the Sponsors' or Infrastructure Ontario's "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

(5) Unless otherwise specified in this RFP, words in this RFP importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, Joint Venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

### **14.2 RFP Definitions**

- (1) Whenever used in the RFP:
- (a) "Acquiree" is defined in RFP Section 3.6(9);
  - (b) "Acquirer" is defined in RFP Section 3.6(9);

- (c) “Acute Care Hospital” means a short-term care hospital providing emergency department, inpatient care, surgery, diagnosis and other related care and treatment services in respect of a wide range of acute conditions, including injuries;
- (d) “Ad Hoc Meetings” is defined in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP;
- (e) “Addendum” means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7;
- (f) “Additional Documentation Submission” is defined in RFP Section 4.1(1)(c);
- (g) “Adjusted Price for Evaluation” is defined in Part 3 of Schedule 5 to this RFP;
- (h) “Advance DPA Works Costs” is defined in RFP Section 10.2.2(1)(a);
- (i) “Advance DPA Works” is defined in RFP Section 10.2.1(3);
- (j) “Advisors” means any person or firm retained to provide professional advice to any one of the Sponsors, a Proponent, or a Proponent Team Member, as applicable;
- (k) “Affiliate” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (l) “Applicable Law” means:
  - (i) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (ii) any Authority Requirement; and
  - (iii) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,in each case, in force in the Province of Ontario, or otherwise binding on Proponents, any Proponent Team Members or the Sponsors and, in particular, shall include the *Public Hospitals Act* (Ontario);
- (m) “Assignment of Project Documents” means the assignment agreement entered into on or before DPA Close between Dev Co and DPA Contracting Authority in the form attached to Schedule 10 – Form of Assignment of Project Documents;
- (n) “Authorities Having Jurisdiction” means utility companies, labour unions, authorities responsible for permits and approvals, and Governmental Authorities;
- (o) “Authority Requirement” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority;



- (p) “AWARD” means the electronic tendering software named AWARD® by Commerce Decisions® (telephone number +44(0) 1235 43 11 00; web site: <https://commercedecisions.com>, e-mail: info@commercedecisions.com);
- (q) “Background Information” means the Sponsors’ provision of various types of background information for the Proponents’ review;
- (r) “Business Day” means any day other than a Saturday, a Sunday, a statutory holiday in the province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario;
- (s) “Client” means the client or clients listed in the RFP Data Sheet in respect of RFP Section 1.1(1);
- (t) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);
- (u) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);
- (v) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (w) “Conflict of Interest” is defined in RFP Section 3.9.1(7);
- (x) “Conflict of Interest, Confidential Information and Litigation Declaration” means the submission form submitted by a Phase 1 Proponent as part of its Preliminary Technical Assessment Submission in the form attached as Form 2-3 – Conflict of Interest, Confidential Information and Litigation Declaration of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP;
- (y) “Construction Phase” means the phase of the Project occurring on and following Commercial Close under a Final Project Agreement to complete the design and construction of the Project;
- (z) “Construction Prime Team Member” means an entity or Joint Venture that will play the lead construction role for the Project;
- (aa) “Consultation Sessions” is defined in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP;
- (bb) “Contact Person” is defined in RFP Section 3.2.1;
- (cc) “Contract A” is defined in RFP Section 1.1(3);
- (dd) “Control” has the meaning given in the *Business Corporations Act* (Ontario), and “Controlled”, “Controls” and “Controlling” have corresponding meanings;
- (ee) “COR Certification” is defined in the Draft Project Agreement;
- (ff) “Data Room” means either the Phase 1 Data Room or the Phase 2 Data Room;

- (gg) “Design Prime Team Member” means an entity or Joint Venture that will play the lead design role for the Project;
- (hh) “Dev Co” is the Preferred Proponent, if the Preferred Proponent has executed the Development Phase Agreement with the Sponsors, or the Preferred Proponent’s Affiliate entity through which the Preferred Proponent has executed the Development Phase Agreement with the Sponsors, as applicable;
- (ii) “Development Phase” means the phase of the Project during which Dev Co will, amongst other things, design the Project, perform Enabling Works, submit a Project Proposal to DPA Contracting Authority, and negotiate with DPA Contracting Authority in respect of the Client and Project Co entering into a Final Project Agreement, in accordance with and subject to the terms and conditions of the Development Phase Agreement;
- (jj) “Development Phase Agreement” means, collectively, those documents included as Schedule 9 – Form of Development Phase Agreement to this RFP;
- (kk) “Development Phase Agreement CCMs” is defined in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP;
- (ll) “Documents” is defined in Schedule 10 – Form of Assignment of Project Documents to this RFP;
- (mm) “DPA Close” means the date the Development Phase Agreement is signed by Dev Co and the Signing Parties;
- (nn) “DPA Close Target Date” means the date set out as the DPA Close Target Date in the Timetable;
- (oo) “DPA Contracting Authority” is defined in the RFP Data Sheet;
- (pp) “Draft Design Agreements” means drafts of all of the Design Agreements that the Proponent intends to enter into with a DPA Design Works Subcontractor or to cause or permit a DPA Design Works Subcontractor to enter into in respect of the DPA Design Works on or before DPA Close;
- (qq) “Draft Design Agreements Submission” is defined in RFP Section 5.1(3);
- (rr) “Draft Design Agreements Submission Deadline” is defined in RFP Section 3.1(1);
- (ss) “Draft Project Agreement” means a draft of the project agreement in respect of the Project attached as a schedule to the Development Phase Agreement;
- (tt) “Economic Interest” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment related benefits;

- (uu) “Electronic Submission and Evaluation System” means either the Phase 1 Electronic Submission and Evaluation System or the Phase 2 Electronic Submission and Evaluation System, as the context requires;
- (vv) “Evaluation Committee” is defined in RFP Section 8.1(1);
- (ww) “Existing Facilities Site Visits” is defined in RFP Section 3.5.1(1);
- (xx) “Existing Facilities” are those facilities, if any, listed as Existing Facilities in the RFP Data Sheet;
- (yy) “Facilities Management Prime Team Member” means an entity or Joint Venture that will play the lead facilities management role for the Project;
- (zz) “Fairness Monitor” is defined in the RFP Data Sheet;
- (aaa) “Final Proposal Score” is defined in RFP Section 8.5.6(3);
- (bbb) “Financial Strength Submission” is defined in RFP Section 4.1(1)(b);
- (ccc) “Financial Submission” means the component of the Proposal submitted in response to the requirements set out in Part 2 of Schedule 5 to this RFP;
- (ddd) “Financial Submission Information” means the information contained in the Proponent’s Financial Submission;
- (eee) “FIPPA” is defined in RFP Section 3.8.1(1);
- (fff) “First Negotiations Proponent” is defined in RFP Section 10.1(1)(b);
- (ggg) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);
- (hhh) “Government of Ontario” means Her Majesty in Right of the Province of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;
- (iii) “Governmental Authority” means any 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 the Sponsors, to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction and, for clarity, includes the Government of Ontario;
- (jjj) “Key Individual” means an individual who the Proponent proposes will play an important role in the Project on behalf of a Proponent Prime Team Member, and as set out in a Proponent’s Proposal;
- (kkk) “Identified Proponent Parties” is defined in RFP Section 3.6(1);

- (lll) “IHSA” is defined in the Draft Project Agreement;
- (mmm) “Impacted Participant” is defined in RFP Section 3.6(11);
- (nnn) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (ooo) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (ppp) “Ineligible Person’s Affiliate” is defined in RFP Section 3.9.2(1);
- (qqq) “Infrastructure Ontario” or “IO” is defined in RFP Section 1.1(1);
- (rrr) “Investment Canada Act” means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time;
- (sss) “ISO 45001 Accreditation” is defined in the Draft Project Agreement;
- (ttt) “Joint Venture” means an association of two or more Proponent Team Members engaged in a limited purpose business enterprise for profit without actual partnership or incorporation;
- (uuu) “Lost Time Injuries Rating” or “LTI Rating” means, for a person, the lost time injury frequency rating as calculated by the WSIB;
- (vvv) “Material Deviation” is defined in RFP Section 8.3(1);
- (www) “Mechanical and Electrical Prime Team Member” means the entity(ies) that will play the lead mechanical contractor and lead electrical contractor roles for the Project;
- (xxx) “MERX” means the MERX electronic tendering services (telephone number 1-800-964-6379; web site: [www.merx.com](http://www.merx.com), e-mail: [merx@merx.com](mailto:merx@merx.com));
- (yyy) “MOH” means the Ontario Ministry of Health;
- (zzz) “Negotiations Proponents” is defined in RFP Section 10.1(1)(b);
- (aaaa) “Non-Disclosure Agreement” is defined in RFP Section 3.8.2(1);
- (bbbb) “Non-Exclusive Parties” is defined in RFP Section 7.6(1);
- (cccc) “OCPM” means an interactive on-line (web-based) project management software system for the Project;
- (dddd) “OILC” is defined in RFP Section 1.1(1);
- (eeee) “Phase 1 Data Room” is defined in RFP Section 2.4(1);

- (ffff) “Phase 1 Evaluation Criteria” means, collectively, the identified evaluation criteria set out in Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP;
- (gggg) “Phase 1 Electronic Submission and Evaluation System” means MERX;
- (hhhh) “Phase 1 Evaluation Teams” is defined in Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP;
- (iiii) “Phase 1 Proponent” means any Proponent participating in the Phase 1 RFP Process that has not received an RFP Eligibility Notice or an RFP Ineligibility Notice;
- (jjjj) “Phase 1 RFP Documents” means, collectively, this RFP main body, Schedule 1 – RFP Data Sheet, Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation, Schedule 3 – Form of Non-Disclosure Agreement, and Schedule 7B – Form of Accounting Firm Letter;
- (kkkk) “Phase 1 RFP Process” is defined in RFP Section 1.2(1)(a)(i);
- (llll) “Phase 1 Submission Portal” is defined in RFP Section 2.4(3);
- (mmmm) “Phase 2 Data Room” is defined in RFP Section 2.4(2);
- (nnnn) “Phase 2 Electronic Submission and Evaluation System” means AWARD;
- (oooo) “Phase 2 Proponent” means any Proponent participating in the Phase 2 RFP Process that has received an RFP Eligibility Notice;
- (pppp) “Phase 2 Proponent Consultation Process” is defined in Schedule 4 – Phase 2 Proponent Consultation Process to this RFP;
- (qqqq) “Phase 2 Proponent Team Member Declaration” means the submission form submitted by a Phase 2 Proponent as part of its Proposal in the form attached as Schedule 7 – Proponent Team Member Declaration to this RFP;
- (rrrr) “Phase 2 RFP Documents” means all RFP Documents, including the Phase 1 RFP Documents;
- (ssss) “Phase 2 RFP Process” is defined in RFP Section 1.2(1)(a)(ii);
- (tttt) “Phase 2 Submission Portal” is defined in RFP Section 2.4(3);
- (uuuu) “Pre-Closing Work Period” means the period commencing on the date the First Negotiations Proponent or the Preferred Proponent commences the performance of the Advance DPA Works in accordance with RFP Section 10.2.1(3) and, subject to RFP Section 10.2.2(2), ending on DPA Close;
- (vvvv) “Preferred Proponent” is defined in RFP Section 1.1(2);

- (www) “Preliminary Technical Assessment Submission” means the submission of a Phase 1 Proponent pursuant to RFP Section 4 and Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP, including a Project Experience Submission, Financial Strength Submission and Additional Documentation Submission;
- (xxxx) “Preliminary Technical Assessment Submission Form” means the submission form submitted by a Phase 1 Proponent as part of its Preliminary Technical Assessment Submission in the form attached as Form 2-1- Master Submission Form of Appendix A – Evaluation Criteria and Submission Requirements of Schedule 2 – Preliminary Technical Assessment Submissions and Evaluation to this RFP;
- (yyyy) “Preliminary Technical Assessment Submission Outside Date” is defined in RFP Section 3.1(1);
- (zzzz) “Price Submission Form” means the price submission form submitted by a Phase 2 Proponent as part of its Proposal in the form attached as Schedule 8 – Price Submission Form to this RFP;
- (aaaa) “Prohibited Act” means:
- (i) offering, giving or agreeing to give to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
    - A. for doing or not doing, or for having done or not having done, any act in relation to a Phase 1 Proponent being issued or receiving an RFP Eligibility Notice or an RFP Ineligibility Notice;
    - B. for doing or not doing, or for having done or not having done, any act in relation to a Phase 2 Proponent becoming a Negotiations Proponent or the Preferred Proponent;
    - C. for showing or not showing favour or disfavour to any person in relation to a Phase 1 Proponent’s Preliminary Technical Assessment Submission; or
    - D. for showing or not showing favour or disfavour to any person in relation to a Phase 2 Proponent’s Draft Design Agreement Submission or Proposal;
- provided that this definition shall not apply to a Proponent or Proponent Team Member (or anyone employed by or acting on their behalf) providing consideration to the Sponsors or any public body in the ordinary course;

- (ii) entering into any other agreement with the Sponsors or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by a Proponent or any Proponent Team Members, Key Individuals or any of their Affiliates, or on its behalf or to its knowledge, to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Sponsors, provided that this definition shall not apply to a fee or commission paid by the Proponent or any Proponent Team Member or any of their Affiliates (or anyone employed by or acting on their behalf) to the Sponsors or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this section;
- (iii) breaching or committing any offence under applicable law in respect of corrupt or fraudulent acts in relation to this RFP Process; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;

(bbbb) “Project” is defined in RFP Section 1.1(6);

(cccc) “Project Experience Submission” is defined in RFP Section 4.1(1)(a);

(dddd) “Proponent” is defined in RFP Section 1.1(2);

(eeee) “Proponent Interviews” is defined in RFP Section 8.6(1);

(ffff) “Proponent Lead” means the Proponent Team Member or Joint Venture on a Proponent’s team which will play the lead project management and coordination role in respect of the Project;

(gggg) “Proponent Prime Team Member” means an entity or Joint Venture that:

- (i) is the Proponent Lead;
- (ii) is a Construction Prime Team Member;
- (iii) is a Design Prime Team Member;
- (iv) is a Mechanical and Electrical Prime Team Member;
- (v) is a Facilities Management Prime Team Member;
- (vi) will provide any of the financial advisory services; or
- (vii) has been put forward by the Proponent as a Proponent Prime Team Member providing a critical or material portion of the construction, design or facilities management services in connection with the Project;

- (hhhhh) “Proponent Representative” is defined in RFP Section 1.3(1);
- (iiii) “Proponent Team Members” means all members of the Proponent team, including Proponent Prime Team Members, that are identified in the Preliminary Technical Assessment Submission;
- (jjjj) “Proponents Meeting” is defined in RFP Section 3.4.1(1);
- (kkkk) “Proposals” is defined in RFP Section 1.1(2);
- (llll) “Proposal Fee” means an amount to compensate a Phase 2 Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal, as determined by the Sponsors in accordance with RFP Section 12.4.2;
- (mmmm) “Proposal Submission Form” means the submission form submitted by a Phase 2 Proponent as part of its Proposal in the form attached as Schedule 6 – Proposal Submission Form to this RFP;
- (nnnn) “Proposal Validity Period” is defined in RFP Section 7.4(1);
- (oooo) “Proposed Change in Identified Proponent Party” is defined in RFP Section 3.6(3);
- (pppp) “Representatives” means the directors, officers, Ministers, employees, agents, accountants, consultants, financial or legal advisors and all other representatives of the person or Governmental Authority being referred to;
- (qqqq) “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:
- (i) (1) is subject to any economic or political sanctions imposed by Canada or Ontario, or (2) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
  - (ii) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (iii) (1) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which the Sponsors consider unacceptable in their sole discretion or (2) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (1) being issued (as determined by the Sponsors in their sole discretion);



- (iv) in the case of an individual, (1) he or she has been convicted of any indictable offence, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (2) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
- (v) in the case of a person other than an individual, (1) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (2) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;
- (vi) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (vii) is subject to a material claim of the Sponsors or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Sponsors view, in either case, be reasonably likely materially to affect the ability of the Proponent to perform its obligations under the Development Phase Agreement, if it were to become the successful Phase 2 Proponent under the RFP Process; or
- (viii) has a material interest in the production of tobacco products;
- (rrrrr) “RFP” is defined in RFP Section 3.2.2(1);
- (sssss) “RFP Data Sheet” means Schedule 1 to this RFP;
- (ttttt) “RFP Documents” is defined in RFP Section 2.1;
- (uuuuu) “RFP Eligibility Notice” means a written notice from the Sponsors to a Phase 1 Proponent informing the Proponent that it is eligible to participate in the Phase 2 RFP Process;

- (vvvvv) “RFP Ineligibility Notice” means a written notice from the Sponsors to a Phase 1 Proponent informing the Proponent that, subject to RFP Section 4.5(3), it is not eligible to participate in the Phase 2 RFP Process;
- (wwwww) “RFP Process” is defined in RFP Section 1.1(3);
- (xxxxx) “Scheduled Visits” is defined in RFP Section 3.5.1(1);
- (yyyyy) “Second Negotiations Proponent” is defined in RFP Section 10.1(1)(b);
- (zzzzz) “Signing Parties” is defined in RFP Section 1.1(7);
- (aaaaa) “Site Visits (Non-Existing Facilities)” is defined in RFP Section 3.5.1(1);
- (bbbbb) “Specific Proposal Part” is defined in RFP Section 11.2(3)(a);
- (ccccc) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (dddddd) “Submission Deadline” is defined in RFP Section 3.1(1)(c);
- (eeeee) “Submittal Information” is defined in RFP Section 3.8.4(5);
- (ffffff) “Submittal Information Licence” is defined in RFP Section 3.8.4(4);
- (gggggg) “Submission Requirements” means all of the submission requirements set out in this RFP;
- (hhhhh) “Technical Submission” means the component of the Proposal submitted in response to the requirements set out in Part 1 of Schedule 5 to this RFP;
- (iiiiii) “Technical Submission Information” means the information contained in the Phase 2 Proponent’s Technical Submission;
- (jjjjj) “Timetable” is defined in RFP Section 3.1(1);
- (kkkkkk) “Topic Meeting” is defined in Schedule 4 – Phase 2 Proponent Consultation Process;
- (lllll) “WISR” means a Workplace Injury Summary Report issued by the WSIB; and
- (mmmmm) “WSIB” means the Workplace Safety and Insurance Board.