

**Infrastructure
ONTARIO**



Infrastructure Ontario

**PROGRESSIVE DESIGN-BUILD
FOR THE SCARBOROUGH SUBWAY EXTENSION –
STATIONS, RAIL AND SYSTEMS PROJECT**

REQUEST FOR PROPOSALS

**RFP No. 21-190
(RFP Version 1.0)**

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REQUEST FOR PROPOSALS**1 INTRODUCTION****1.1 General**

- (1) This Request for Proposals (“**RFP**”) is issued by Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (“**Infrastructure Ontario**”, also known as “**OILC**” and “**IO**”) in conjunction with the client or clients (referred to collectively as the “**Client**”) named in the RFP Data Sheet. Infrastructure Ontario and the Client are collectively referred to as the “**Sponsors**” for the purposes of this RFP.
- (2) 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 the Data Room.
- (3) In this RFP:
 - (a) Prequalified Parties that participate in the RFP Process are referred to as “**Proponents**”, and proposal submissions submitted by Prequalified Parties during the RFP Phase, as may be revised by RFP Section 6.3, are referred to as “**RFP Proposals**”.
 - (b) The Proponent that is selected to enter into the Development Phase Agreement with the Signing Parties, after being shortlisted by the Sponsors during the RFP Phase of the RFP Process, is referred to as the “**Shortlisted Proponent**”, and the proposal submission submitted during the DPA Phase by the Shortlisted Proponent pursuant to the Development Phase Agreement is referred to as a “**Project Proposal**”. For clarity, a Shortlisted Proponent will be required to execute the Development Phase Agreement with the Signing Parties prior to proceeding to the DPA Phase of the RFP Process.
 - (c) The Proponent that is selected to enter into a Project Agreement with the Signing Parties during the DPA Phase of the RFP Process pursuant to the Development Phase Agreement is referred to as the “**Successful Proponent**”. Only a Shortlisted Proponent that submits a Project Proposal for consideration by the Sponsors pursuant to the terms of the Development Phase Agreement may be selected by the Sponsors to enter into a Project Agreement with the Signing Parties.
 - (d) For greater certainty, the term “**Proponents**” includes (i) the Prequalified Parties prior to the submission of their RFP Proposals, (ii) a Shortlisted Proponent prior to the submission of its Project Proposal pursuant to the Development Phase Agreement, and (iii) the Successful Proponent prior to the execution of the Project Agreement with the Signing Parties pursuant to the Development Phase Agreement.
- (4) Except as provided in RFP Section 1.1(4)(a), the procurement process to select a Successful Proponent shall commence with the issuance of this RFP and shall terminate on the PA Effective Date (the “**RFP Process**”). Except as provided in RFP Sections 3.8.2 and 3.8.3, and except for the Sponsors’ obligation to pay a Break Fee or an RFP Proposal Fee, all rights and obligations arising

out of this RFP terminate either on the cancellation of this RFP Process by the Sponsors, if such cancellation occurs, or

- (a) for the Proponents that are not a Shortlisted Proponent or the Successful Proponent, on the expiration of the RFP Proposal Validity Period (or the extended RFP Proposal Validity Period, if applicable); and
 - (b) for the Successful Proponent, the earlier to occur of (i) the PA Effective Date, and (ii) the date the Development Phase Agreement is otherwise terminated in accordance with its terms.
- (5) In accordance with RFP Section 11.1(1), nothing in this RFP shall be construed as a bidding contract or tender, and no legal obligations or a contractual relationship (often referred to as "Contract A/Contract B") will be created pursuant to this RFP between the Sponsors and any Proponent.
- (6) Except as set out in and without limiting the Development Phase Agreement:
- (a) Infrastructure Ontario will manage the RFP Process on behalf of the Sponsors, and will be the single point of contact for Proponents on behalf of the Sponsors; and
 - (b) Proponents shall contact Infrastructure Ontario only through the Contact Person as set out in RFP Section 3.2.1, unless otherwise directed in writing by the Sponsors.
- (7) The Project to which this RFP applies has been approved by the Ministry of Infrastructure (“**MOI**”) to proceed as a progressive design-build project. The Project shall follow five fundamental principles for the procurement of public infrastructure, which include:
- (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.
- (8) While Infrastructure Ontario will manage the procurement process in respect of the Project, the Shortlisted Proponent, subject to the requirements and conditions of the RFP Documents, will enter into the Development Phase Agreement with the party or parties named as the signing party or parties in the RFP Data Sheet (the “**Signing Parties**”). Unless listed as Signing Parties to the Development Phase Agreement in the RFP Data Sheet, neither Infrastructure Ontario, nor the Government of Ontario will be parties to the Development Phase Agreement or the Final Project Agreement.

1.2 Prequalified Parties and Proponent Representatives

- (1) Subject to RFP Section 3.6, only those parties that were prequalified through the Project’s Request for Qualifications (“**RFQ**”) process that preceded this RFP are eligible to participate in the RFP Process. The prequalified parties are listed in the RFP Data Sheet (“**Prequalified Parties**”). The prequalification documents submitted by each of the Prequalified Parties in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Prequalified Party’s “**Prequalification Submission**”.
- (2) Except as otherwise set out in the Development Phase Agreement, all correspondence from the Sponsors to a Proponent will be sent to the person identified, in the Proponent’s Prequalification Submission, to receive information and notices on behalf of the Prequalified Party (the “**Proponent Representative**”). 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.

1.3 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 – Prequalification Stage**

The prequalification stage (“**Prequalification Stage**”) preceded the RFP Process and identified the Prequalified Parties. The Prequalification Stage is a stand-alone independent stage and is complete once the Prequalified Parties are identified by the Sponsors (whether identified initially as Prequalified Parties or added subsequently in accordance with the RFQ documents) and have received notification by the Sponsors that they are prequalified for the RFP Process.

- (b) **Stage 2 – RFP Process**

The RFP Process will be conducted in the following phases:

- (i) The first phase of the RFP Process (the “**RFP Phase**”) is intended to result in the identification of the Shortlisted Proponent by way of a competitive procurement. The RFP Phase will include:
 - (A) the submission by the Proponents to the Sponsors of their Draft Design Agreements Submissions in accordance with this RFP;
 - (B) the submission by the Proponents to the Sponsors of their Draft Dev Co Structure Submissions in accordance with this RFP;
 - (C) such Proponents' participation in Consultation Sessions; and

(D) the submission by such Proponents to the Sponsors of RFP Proposals in accordance with this RFP.

(ii) The second phase of the RFP Process (the “**DPA Phase**”) will immediately follow the RFP Phase, and will commence upon the execution of the Draft Development Phase Agreement by the Signing Parties and the Shortlisted Proponent. Pursuant to the terms of the Development Phase Agreement, the DPA Phase of the RFP Process is intended to result in the identification of the Successful Proponent.

(c) **Stage 3 – Implementation of the Project Agreement**

If, pursuant to the terms of the Development Phase Agreement, the Signing Parties and the Successful Proponent execute the Project Agreement, then the terms and conditions of the Project Agreement shall determine how the Project is to proceed.

1.4 Signatories to Development Phase Agreement and Project Agreement

- (1) Subject to any restrictions set out in the RFP Data Sheet, the Shortlisted Proponent will (as Dev Co) execute the final Draft Development Phase Agreement with the Signing Parties in accordance with this RFP.
- (2) If, pursuant to the Development Phase Agreement, Dev Co is selected as the Successful Proponent, then Dev Co (as the Contractor) will execute the Final Project Agreement with the Signing Parties.

1.5 Fairness Monitor

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

2 THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

- (1) The RFP documents (the “**RFP Documents**”) are:
 - (a) this RFP;
 - (b) Schedule 1 – RFP Data Sheet;
 - (c) Schedule 2 – Proponent Consultation Process;
 - (d) Schedule 3 – RFP Proposal Submission Requirements and Evaluation Criteria, consisting of:
 - (i) Part 1 – RFP Proposal Submission Requirements;
 - (ii) Part 2 – RFP Proposal Format and Evaluation;

- (e) Schedule 4 – RFP Proposal Submission Form;
- (f) Schedule 5 – RFP Proposal Participant Conflict Screening List;
- (g) Schedule 6 – Proponent Team Member Declaration;
- (h) Schedule 7A – Certificate of Officer;
- (i) Schedule 7B - Form of Accounting Firm Letter;
- (j) Schedule 8 – Not Used
- (k) Schedule 9A – Surety’s Consent;
- (l) Schedule 10 – Form of Draft Development Phase Agreement (including all related Schedules appendices and attachments) as listed in the RFP Data Sheet;

[Note to Proponents: The form of Draft Project Agreement is Schedule 12 – Draft Project Agreement of the Draft Development Phase Agreement, and is posted in the Data Room.]

- (m) Schedule 11 – Form of Assignment of Project Documents;
 - (n) Schedule 12 – DPA Completion Documents; and
 - (o) 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) Conflicts During the RFP Phase

For the purposes of the RFP Process during the RFP Phase, 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 or the Draft Development Phase Agreement during the RFP Process, the Draft 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 any of the documents that constitute the Draft Development Phase Agreement, the provisions of the Draft Development Phase Agreement dealing with conflicts or inconsistencies shall govern.
- (2) Conflicts During the DPA Phase
- (a) For the purposes of the RFP Process during the DPA Phase:
- (i) the Development Phase Agreement and the Assignment of Project Documents shall not be RFP Documents;
- (ii) if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising the RFP Documents, this RFP shall prevail over the Schedules to this RFP during the RFP Process in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters;
- (iii) as between the Sponsors and the Proponents other than the Shortlisted Proponent and the Successful Proponent, for the purpose of resolving any conflicts or inconsistencies among each of the documents that constitute the Draft Development Phase Agreement, the provisions of the Draft Development Phase Agreement dealing with conflicts or inconsistencies shall govern; and
- (iv) as between the Shortlisted Proponent and the Successful Proponent (as Dev Co) and the Sponsors (as Contracting Authority):
- (A) Schedule 10 – Form of Draft Development Phase Agreement and Schedule 11 – Form of Assignment of Project Documents shall be deemed not to be a part of the RFP Documents; and
- (B) if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising the RFP Documents and the terms and conditions of the Development Phase Agreement or the Assignment of Project Documents, then the terms and conditions of the Development Phase Agreement or the Assignment of Project Documents, as the case may be, shall prevail over this RFP and Schedules to this RFP.
- (3) 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.
- (4) If there is a conflict or inconsistency between:
- (a) the Sponsors' electronic version of an RFP Document as contained in the Data Room; and
- (b) any other version of the same RFP Document (whether in electronic or hard copy),

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

- (5) If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are downloaded by the Proponent, the documents contained in the Data Room shall govern.
- (6) If there is any conflict or inconsistency between two versions of the same RFP Document contained in the 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(6), 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.

2.3 Distribution of Documents to Proponents

- (1) Except as provided in RFP Sections 2.3(2) and 3.7(3), the Sponsors will circulate all RFP Documents, including Addenda, by placing them in the Data Room and notifying the Proponent Representatives by e-mail that RFP Documents or Addenda, as applicable, have been added to the Data Room. Notification to Proponents by Infrastructure Ontario that documents have been added to the Data Room is a courtesy only and Proponents are solely responsible to ensure that they reviewed all documents in the Data Room in accordance with RFP Section 2.4(3) and, in particular, have reviewed all documents in the Data Room immediately prior to submitting its RFP Proposal.
- (2) During the RFP Phase of the RFP Process, the Sponsors may circulate some RFP Documents in paper copy. If the Sponsors circulate any RFP Documents in paper copy, Proponents will be notified of a paper copy circulation by way of a notice in the Data Room.
- (3) Other than the Shortlisted Proponent and the Successful Proponent, no Proponent shall be entitled pursuant to this RFP to receive or review a copy of the Development Phase Agreement, the Assignment of Project Documents or the Final Project Agreement, any amendments to these agreements, or to any other agreement related to the Project.

2.4 Data Room

- (1) The Sponsors have established an electronic data room (the "**Data Room**") at a secure website address for:
 - (a) the distribution of RFP Documents and Addenda (including "black-lined" RFP Documents revised by Addenda);
 - (b) the provision of various types of background information for the Proponents' review ("**Background Information**"); and
 - (c) the receipt of RFIs from Proponents and the posting of responses to RFIs.
- (2) The Data Room will be accessible on approximately the date set out in the Timetable. The Sponsors may add, delete or amend documents in the Data Room at any time.
- (3) 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 Data Room and receipt of a Data Room password;
- (b) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from the Data Room; and
- (c) checks the Data Room frequently for the addition, deletion or amendment of RFP Documents, Background Information and the posting of responses to RFIs and, at all times during the RFP Process keeps itself informed of and takes into account the most current RFP Documents, Background Information and responses to RFIs.

2.5 Proponent Investigations

- (1) Except as expressly provided in the Development Phase Agreement, 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 and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project, including the Draft Development Phase Agreement, as required by each Proponent to complete its respective RFP Proposal. The Proponents' and Proponent Team Members' obligations set out in this RFP Section 2.5 apply irrespective of any Background Information in the Data Room or information contained in the RFP Documents or in responses to RFIs. 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 Draft Development Phase Agreement.
- (2) Except as expressly 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 the 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 and 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. Each Proponent and Proponent Team Member is responsible for forming its own independent judgments, interpretations, conclusions and deductions about any and all such information, and should examine all information relevant to the risks, contingencies and other circumstances that could affect their RFP Proposal.

2.6 Project Affordability Constraints

- (1) The Sponsors may elect to disclose to the Proponents any affordability constraints in respect of the cost of the Project identified by the Sponsors. If the Sponsors elect to make such disclosure to the Proponents, then such election shall be set out in the RFP Data Sheet and such disclosure shall be Background Information.

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 deadline for the submission of the Draft Design Agreements Submissions (the “**Draft Design Agreements Submission Deadline**”);
 - (b) the deadline for the submission of the Draft Dev Co Structure Submissions (the “**Draft Dev Co Structure Submission Deadline**”);
 - (c) the deadline for the submission of the RFP Proposals (the “**RFP Proposal Submission Deadline**”);
 - (d) the target date for the submission by the Shortlisted Proponent (as Dev Co) of the Project Proposal pursuant to the Development Phase Agreement.
- (2) The Sponsors may amend the Timetable in their sole discretion:
 - (a) at any time prior to the RFP Proposal Submission Deadline for events that are to occur prior to or on the RFP Proposal Submission Deadline, as applicable, including the RFP Proposal Submission Deadline itself; and
 - (b) at any time in the RFP Process for events that are to occur after the RFP Proposal Submission Deadline.
- (3) During the DPA Phase, the general timetable for the DPA Works, including for the submission of the Project Proposal to the Sponsors (as Contracting Authority) will be determined in accordance with the Development Phase Agreement.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

- (1) Except as set out in RFP Section 3.4.2, in the Development Phase Agreement or as otherwise directed in writing by the Sponsors, the Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their RFP 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 the 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 Phase:
 - (a) Proponents are permitted to submit RFIs categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Proponents (“**General RFIs**”); and
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”);
 - (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 or to withdraw the RFI;
 - (c) if the Sponsors determine, in their sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the Sponsors may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and
 - (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.
- (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) During the RFP Phase, Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.
- (4) During the RFP Phase, 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. Neither the Sponsors nor the Government of Ontario are 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 the 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) During the RFP Phase, the Sponsors may, in their sole discretion, request Proponents submit comments on the RFP Documents and, in particular, comments on the Draft Development Phase Agreement (including Schedule 12 – Draft Project Agreement of the Draft 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 all or any part of any comment made by a Proponent pursuant to 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, employees or representatives 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) Neither the Sponsors nor the Government of Ontario are, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors, employees or representatives 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, employees or representatives rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors or the Government of Ontario.

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, including the Development Phase Agreement.
- (2) Without limiting the generality of RFP Section 3.3.2(1) but subject to RFP Section 3.3.2(3), 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 or the RFP Proposals:

- (a) any member of the Evaluation Committee;
- (b) any Advisor to the Sponsors or the Evaluation Committee;
- (c) any employee or representative of:
 - (i) the Sponsors;
 - (ii) MOI, MTO 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 3.3.2(2)(d),

(collectively, the “**Prohibited Contacts**”).

- (3) During the DPA Phase, as between the Sponsors (as Contracting Authority) and the Shortlisted Proponent and the Successful Proponent (as Dev Co) and, solely for the purposes of the performance of the DPA Works under, or the interpretation of, the Development Phase Agreement, the following persons shall not be Prohibited Contacts:
 - (a) employees and representatives of the Sponsors and their respective directors, officers and consultants; and
 - (b) any other person set out in RFP Section 3.3.2(2) identified by the Sponsors, in their sole discretion, to Dev Co.
- (4) 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 Sections 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 8.2; 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 Sections 3.3.2(4)(a) or 3.3.2(4)(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, the Development Phase Agreement or the Project or any matters related thereto, without the prior written consent of the Sponsors, which consent may be withheld in the Sponsors' sole discretion.
- (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, another RFP Proposal or, if applicable, a Project 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) RFP Section 3.3.3(2) does not prohibit any disclosures necessary to permit,
 - (a) with regards to all Proponents other than the Shortlisted Proponent and the Successful Proponent, the Proponent to discuss the Project with prospective DPA Subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project; and
 - (b) with regards to the Shortlisted Proponent and the Successful Proponent (as Dev Co), the Proponent to perform its obligations under the Development Phase Agreement, subject to its other confidentiality obligations under the Development Phase Agreement, including to discuss the Project with and to engage prospective DPA Subcontractors.

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 either (a) the preparation of its own Draft Design Agreements Submission, Draft Dev Co Structure Submissions or RFP Proposal, or (b) the Draft Design Agreements Submission, Draft Dev Co Structure Submissions or RFP Proposal of any other Proponent, in a fashion that would contravene Applicable Law. Proponents shall prepare and submit the Draft Design Agreements Submissions, Draft Dev Co Structure Submissions and RFP Proposals 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 (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) The Sponsors shall communicate locations and particulars with respect to Proponents' Meetings to the Proponents in advance. All meetings shall be held in the Greater Toronto Area, Ontario (or by video-conference) as specified in the RFP Data Sheet. The Sponsors reserve the rights, in their sole discretion, to limit the number of Proponent attendees that may attend any Proponents' Meeting. The Sponsors shall notify the Proponents in advance in the event any such limitation is to be imposed.
- (3) 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.
- (4) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents' Meeting 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) During the RFP Phase, 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 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 Submissions, the Draft Dev Co Structure Submissions, the Draft Development Phase Agreement or the Proponents' RFP Proposals.
- (2) Whether the Sponsors intend to hold Commercially Confidential Meetings and the location of those meetings is set out in Schedule 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 in the Timetable. While attendance at Commercially Confidential Meetings by Proponents is not mandatory, 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.

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- (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 2 – Proponent Consultation Process to this RFP 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 2 - Proponent Consultation Process to this RFP 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 2 – Proponent Consultation Process to this RFP 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 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 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 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 Lands

3.5.1 Scheduled Visits

- (1) If, in the RFP Data Sheet, the Sponsors have established scheduled dates and times for visits to see the Lands or the Site for all Proponents, Proponent Team Members and their respective representatives and Advisors during the RFP Phase of the RFP Process (“**Scheduled Visits**”), the dates and times of the Scheduled Visits will be set out in the Timetable.
- (2) The following shall apply to any Scheduled Visits:
 - (a) 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;
 - (b) 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, residing or working in close proximity to any part of the Site or the Lands which are not accessible by the general public, as applicable;
 - (c) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the Site or the Lands which are not accessible by the general public, as applicable, to which the Proponent has been granted access in the Contact Person’s confirmation;
 - (d) the Proponent and Proponent Team Member representatives shall not take photographs without the prior written consent of the Contact Person. If photographs are permitted by the Contact Person, they may be taken by the Proponent and Proponent Team Member representatives only in the specific areas of the Site or the Lands which are not accessible by the general public, for which consent to photograph has been given; and
 - (e) the Proponent shall comply with any supplementary rules set out in the RFP Data Sheet for Scheduled Visits.
- (3) Any statement made by Infrastructure Ontario, the Client or any of their respective Advisors or representatives during any Scheduled Visit to the Site or the Lands, if any, 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 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.

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- (4) Except for Scheduled Visits, Proponents are not permitted to access any part of the Site or the Lands which is not accessible by the general public except by prior written arrangement with the Sponsors.

3.5.2 Ownership of the Metrolinx Lands

- (1) The Proponent acknowledges and agrees that, as of the date of the issuance of this RFP, the Client owns or has access to some, but not all, of the Metrolinx Lands that will ultimately be owned by it or to which it will ultimately have access for the Project. The Client's acquisition of and access to all of the Metrolinx Lands may not be completed until after the PA Effective Date. Without limiting any right of the Sponsors under the Development Phase Agreement, the Sponsors will only be able to provide the Proponents with access to those portions of the Metrolinx Lands that have been acquired by the Client or to which the Client has access.

3.6 Changes to Proponents and Proponent Team Members and Key Individuals

- (1) RFP Sections 3.6(2) to 3.6(9) and RFP Section 3.6(11) apply to all Proponents other than the Shortlisted Proponent after DPA Close and the Successful Proponent.
- (2) During the RFP Process, Proponents shall not change their shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), Proponent Team Members, proposed subcontractors, Key Individuals or other parties identified in the Proponents' Prequalification Submissions (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors.
- (3) 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.
- (4) No later than the deadline set out in the Timetable, a Proponent may request a change in its Identified Proponent Parties, 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.
- (5) If an Identified Proponent Party 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 RFP Proposal Submission Deadline, whichever is earlier.
- (6) A request notice delivered under either RFP Sections 3.6(4) or 3.6(5), as applicable, shall:
- (a) clearly identify the Proposed Change in Identified Proponent Party (including, as applicable, a statement of the Proponent's intention to continue 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 RFP Proposal or impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Development Phase Agreement and Final Project 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 RFQ process.
- (7) In reviewing a request made in accordance with RFP Section 3.6(6) 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 Section 3.6(4) or RFP Section 3.6(5), as applicable. The Sponsors are under no obligation to consider any further documentation or additional information delivered after the applicable deadline.
- (8) 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 and conditions and standard of review as set out in this RFP Section 3.6.
- (9) The Sponsors may, at any time during the RFP Process and in their sole discretion, disqualify a Proponent and terminate a Proponent's continued involvement in the RFP Process or allow a 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 at any time during the RFP Process by the Proponent without obtaining prior consent of the Sponsors (including any withdrawal of an Identified Proponent Party described in RFP Section 3.6(5));

- (b) a request for a change in any Identified Proponent Party is made after the deadlines set out in RFP Section 3.6(4) or RFP Section 3.6(5), as applicable; or
 - (c) a change in circumstances with respect to a Proponent after the RFP Proposal Submission Deadline 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 and the Project Agreement.
- (10) If, at any time during the RFP Process, and notwithstanding any other provision in this RFP, there is a Change in Control of a Proponent or of one of its Proponent Team Members (the “**Acquiree**”) by one of the other Proponents or one of the other Proponent's Proponent Team Members (the “**Acquirer**”):
- (a) the Acquiree shall be immediately disqualified from further participation in this RFP Process. 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; and
 - (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.
- (11) If, after identification of the Shortlisted Proponent pursuant to RFP Section 9.1 and before DPA Close, 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 Shortlisted Proponent's RFP Proposal be substituted, the Sponsors shall notify the Shortlisted Proponent (including a detailed explanation of the reasons for such determination), and, within 10 days following receipt by the Shortlisted Proponent of such notice, the Shortlisted 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.

3.7 Addenda/Changes to the RFP Documents

- (1) Other than as set out in the Development Phase Agreement, the Sponsors may, in their sole discretion, amend or supplement the RFP Documents at any time during the RFP Process. The Sponsors shall issue changes to the RFP Documents by Addenda only. No other 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. For greater clarity, during the DPA Phase, amendments to the Development Phase Agreement (including any amendments to the Draft Project Agreement) will be circulated to only the Shortlisted Proponent (as Dev Co) and, if applicable, the Successful Proponent (as Dev Co), and will not be circulated to any other Proponent.

- (2) Unless otherwise determined by the Sponsors, in their sole discretion, a Proponent that has been notified by the Sponsors that it has not been selected as the Shortlisted Proponent will not receive subsequent circulations of RFP Documents and Addenda.
- (3) Notwithstanding anything to the contrary in this RFP but subject to the terms and conditions of the Development Phase Agreement, during the DPA Phase of the RFP Process, the Sponsors may, in their sole discretion, circulate Addenda to the RFP Documents only to the Shortlisted Proponent or the Successful Proponent by email, by placing them in the Data Room or by any other means as may be determined by the Sponsors.
- (4) The Proponent is solely responsible to ensure that it has received all Addenda issued by the Sponsors. Proponents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.
- (5) Subject to RFP Section 3.7(3), the Sponsors shall issue Addenda by placing them in the Data Room and notifying the Proponent Representatives by e-mail that an Addendum has been placed in the Data Room.
- (6) 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 Acts

- (1) Proponents are advised,
 - (a) that the Sponsors may be required to disclose the RFP Documents or a part or parts of any RFP Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time (“**FIPPA**”); and
 - (b) because this Project includes New Third Party Infrastructure, the applicable owners of such New Third Party Infrastructure may be required to disclose a part or parts of any RFP Proposal pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time (“**MFIPPA**”).
- (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 RFP Proposals or 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 of the Information and Privacy Commissioner or otherwise as required under Applicable Law.

3.8.2 Confidentiality Agreements

- (1) Each Prequalified Party has executed a submission form to the RFQ that states that they agree to be bound by the confidentiality provisions set out in the RFQ. If the Sponsors, in their sole discretion, require a separate confidentiality agreement from Proponents, no later than five days after a request by the Sponsors, the Proponent shall cause each of its employees, representatives and Advisors and its Proponent Team Members and each of their employees, representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the Sponsors a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the Sponsors, in their sole discretion. To the extent that the provisions of the confidentiality agreements are inconsistent or conflict with the requirements of RFP Section 3.8.3, the more stringent confidentiality obligation shall govern.

3.8.3 Confidential Information

- (1) For the purpose of this RFP Process and subject to the Development Phase Agreement, “**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.
- (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 an RFP Proposal 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 RFP Proposal 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, all Confidential Information shall be returned by the Proponents to the Sponsors 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 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, the Government of Ontario and their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors, 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, 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 this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit an RFP 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.
- (7) During the DPA Phase of the RFP Process, in the event there is any conflict or inconsistency among the terms and conditions of this RFP Section 3.8.3, and the terms and conditions of Section 27.1 (Confidentiality and Personal Information) of the Development Phase Agreement, then as between the Sponsors (as Contracting Authority) and the Shortlisted Proponent (as Dev Co) the terms and conditions of Section 27.1 of the Development Phase Agreement shall prevail to the extent of such conflict or inconsistency.

3.8.4 Copyright and Use of Information in RFP Proposals

- (1) The Sponsors' rights, as set out in this RFP Section 3.8.4, to the RFP Proposal and all RFP Proposal Information submitted by the Proponent during the RFP Process shall be granted to the Sponsors as follows:
 - (a) if an RFP Proposal Fee is offered in accordance with RFP Section 11.4.2:
 - (i) for unsuccessful Proponents, upon payment of the RFP Proposal Fee; and
 - (ii) for the Shortlisted Proponent, upon DPA Close; or
 - (b) if the RFP Process is cancelled and a Break Fee is offered in accordance with RFP Section 11.4.3, upon payment of the Break Fee; or
 - (c) if RFP Sections 3.8.4(1)(a) or 3.8.4(1)(b) do not apply, upon submission of the RFP Proposal.
- (2) Proponents shall not use or incorporate into their RFP 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 licencing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Project.
- (3) All requirements, designs, 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 designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the Sponsors.
- (4) The Proponent and each Proponent Team Member, by their participation in the RFP Process, hereby grants to each of, the Sponsors and Her Majesty the Queen in Right of Ontario a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the RFP Proposal Information (the "**RFP Proposal Information Licence**"). Without limiting the foregoing, the RFP Proposal Information Licence shall include the right to modify the RFP Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except the Contractor (as defined in the Project Agreement) and Dev Co (as defined in the Development Phase Agreement) 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 RFP Proposal Information pursuant to the RFP Proposal Information Licence.
- (5) For the purpose of this RFP Section 3.8.4, "**RFP Proposal Information**" includes:
 - (a) all information contained in an RFP Proposal or which is disclosed by or through a Proponent to the Sponsors during the evaluation of RFP Proposals (including during any Proponent Interview or Collaborative and Behavioural Assessments) or during the process of executing the 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 Collaborative and Behavioural Assessments, the preparation, submission, review or negotiation of any RFP Proposal, 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 RFP Proposal 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 the Sponsors, or Her Majesty the Queen in Right of Ontario to use any of the RFP Proposal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against Infrastructure Ontario, the Client, 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.
- (7) For greater certainty, the Sponsors' rights to the Project Proposal and information developed and submitted by Dev Co to the Sponsors during the DPA Phase under the Development Phase Agreement are addressed in the Development Phase Agreement.

3.8.5 Open Data Directive

- (1) Proponents acknowledge that the RFP Documents, the Development Phase Agreement and any part or parts of any RFP Proposals, Draft Design Agreements Submissions, Draft Dev Co Structure Submissions and any other submissions from the Proponents during this RFP Process (including any Project 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 their Proposal Submission Forms and the Proponent Team Member Declaration (in respect of Proponent Team Members), all perceived, potential and actual Conflicts of Interest. For clarity, Proponents have an ongoing obligation to comply with this RFP Section 3.9.1.
- (2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of its RFP Proposal (or, if applicable, its Project Proposal submitted pursuant to the terms of the Development Phase Agreement), 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

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 a Conflict of Interest.
- (5) Without limiting the generality of RFP Sections 3.9.1(4) or 3.9.1(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 Proponent’s Draft Design Agreements Submission, Draft Dev Co Structure Submission, RFP Proposal or, if applicable, the Shortlisted Proponent’s Project Proposal developed or overseen pursuant to the terms of the Development Phase Agreement (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;
 - (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 Shortlisted Proponent under the RFP Process; or
 - (iii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the Final Project Agreement if that Shortlisted Proponent was determined to be the Successful Proponent pursuant to the Development Phase Agreement;
 - (b) has contractual or other obligations to any of the Sponsors that could or could be seen to have been compromised or otherwise 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) that

- (i) has been made available to the Proponent, any Proponent Team Member or any Proponent Advisor by the Client, Infrastructure Ontario, MTO or any municipality;
- (ii) is of strategic and/or material relevance to the RFP Process or to the Project; and
- (iii) is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage,

provided that the Shortlisted Proponent's or the Successful Proponent's knowledge of any such confidential information made available to the Proponent (as Dev Co) pursuant to the Development Phase Agreement shall not constitute a Conflict of Interest.

- (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 a Proponent Team Member.
- (2) The Sponsors may, in their sole discretion, 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, 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) Proponents shall deliver to the Contact Person, no later than the deadline set out in the Timetable, the list of Identified Proponent Parties and other significant individuals having involvement in the preparation and/or oversight of the preparation of the Draft Design Agreements Submission, Draft Dev Co Structure Submission or the RFP Proposal in the form prescribed by Schedule 5 – RFP Proposal 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 Proponent, Identified Proponent Party or any employee or Advisor of the Sponsors in respect of the Project.

3.10 Proponent Costs

- (1) Except as otherwise expressly provided in the Development Phase Agreement in respect of the Shortlisted Proponent and the Successful Proponent, the Proponent 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 Proponent's involvement in:
 - (a) the preparation and submission of the Draft Design Agreements Submissions, the Draft Dev Co Structure Submissions and all other submittals under this RFP;
 - (b) the preparation, presentation and submission of their RFP Proposals;
 - (c) attendance at any Proponents' Meeting, Commercially Confidential Meeting, Collaborative and Behavioural Assessment or any other meeting, interview (including any Proponent Interview) or consultation session with the Sponsors;
 - (d) due diligence and information gathering processes;
 - (e) any Scheduled 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) achieving DPA Close.
- (2) Except as explicitly provided in RFP Sections 11.4.2 and 11.5(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) In addition to any insurance that a Shortlisted Proponent and the Successful Proponent (in as Dev Co) is required to obtain, keep and maintain in force pursuant to the Development Phase Agreement, during the RFP Phase of 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 3.11.1(1)(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 Lands, or any part thereof, or at any facilities or premises of the Sponsors for any purpose whatsoever:
- (a) Commercial/Comprehensive General Liability insurance, having an inclusive limit of not less than \$10,000,000 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:
 - (i) as insureds or additional insureds each of Her Majesty the Queen in right of Ontario, MOI, Infrastructure Ontario and the Client (and each of their respective directors, officers, employees, legislators, members, officials, consultants and agents);
 - (ii) an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by Infrastructure Ontario, Her Majesty the Queen in right of Ontario, MOI, and the Client; and
 - (iii) a waiver of subrogation in favour of all additional insureds;
 - (b) Automobile Liability insurance, in the amount of \$5,000,000 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 Lands or on or at any facilities or premises of the Sponsors; and

- (c) all other insurance required to be obtained by Applicable Law.
- (2) As a condition of allowing access to the Lands or the facilities or premises of the Sponsors, the Sponsors may, in their sole discretion, require Proponents to provide evidence acceptable to the Sponsors that the insurance required by RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c) is in place.
- (3) If a Proponent proposes to perform any investigations at the Lands, the risk related to which may not be fully insured under the policies set out in RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c), 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), 3.11.1(1)(b) and 3.11.1(1)(c).
- (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 Lands or any 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.

3.11.3 Infrastructure Ontario Construction Insurance Program

- (1) The Sponsors may determine that certain construction insurance to be provided in respect of the DPA Works under the Development Phase Agreement and the Works under the Project Agreement will be obtained under the Infrastructure Ontario Construction Insurance Program (“**IOCIP**”), as set out in the RFP Data Sheet. If a Project has been designated by Infrastructure Ontario to proceed under IOCIP, a “User Guide” will be posted as Background Information. The User Guide includes the form of confidentiality agreement that must be entered into between a Proponent and the IOCIP Broker of Record and the forms of applications to be completed by a Proponent and submitted to the IOCIP Broker of Record for the Works phase construction insurance.

3.12 Interview as part of the Evaluation and Scoring of the RFP Proposal

- (1) The Sponsors may, in their sole discretion, conduct interviews with Proponents as part of the evaluation process set forth in RFP Section 7.5.3 (a “**Proponent Interview**”), with the results of such Proponent Interview being evaluated and scored in accordance with Schedule 3 – RFP Proposal Submission Requirements and Evaluation Criteria to this RFP.
- (2) Whether or not the Sponsors intend to hold Proponent Interviews contemplated by this RFP Section 3.12 will be set out in the RFP Data Sheet. If the Sponsors intend to hold Proponent Interviews

contemplated by this RFP Section 3.12, the Sponsors will provide Proponents with the details of the date and time of such Proponent Interviews, and the manner in which such Proponent Interviews will be conducted.

3.13 Collaborative and Behavioural Assessment

- (1) As part of the evaluation process set forth in RFP Section 7.5.7, the Sponsors intend to undertake one behavioural assessment (the “**Collaborative and Behavioural Assessment**”) to assess how a Proponent demonstrates the behaviours required to implement effective collaborative working. The process for the Collaborative and Behavioural Assessments is set out in Section 5.0 of Part 2 of Schedule 3 to this RFP. The results of the Collaborative and Behavioural Assessment will be evaluated and scored in accordance with Part 2 of Schedule 3 – RFP Proposal Format and Evaluation to this RFP.
- (2) The Collaborative and Behavioural Assessment will comprise of an interactive, collaborative and behavioural assessment workshop. If the Sponsors intend to hold the Collaborative and Behavioural Assessment, then the Sponsors’ intention to do so will be set out in the RFP Data Sheet and the Sponsors will provide Proponents with the details of the date and time of such Collaborative and Behavioural Assessment.
- (3) The Collaborative and Behavioural Assessment will be independently facilitated and managed by a collaborative and behavioural consultant. The Fairness Monitor may attend the workshop comprising the Collaborative and Behavioural Assessment.

4 EARLY DRAFT DOCUMENT SUBMISSION REQUIREMENTS

4.1 Draft Design Agreements Submission

- (1) Each Proponent acknowledges that the Sponsors wish to review each 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 Shortlisted Proponent under this RFP pursuant to RFP Section 9.1 in order to ensure that the Shortlisted Proponent’s Design Agreements will comply with RFP Section 10.2(1)(d).
- (2) The Draft Design Agreements and the Design Agreements must satisfy the requirements set out in the RFP Data Sheet.
- (3) Each 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) 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 Submission, and will, subject to RFP Section 3.8.1, 3.8.4 and 3.8.5 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 the RFP Proposal and shall not be evaluated under this RFP.

- (6) The Sponsors may, in their sole discretion, provide written conformance feedback to the 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 Agreement;
 - (b) no part of the evaluation of its RFP 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 Final Project Agreement, the Project or otherwise.
- (7) The Proponent acknowledges that:
 - (a) in the RFP Proposal Submission Form, it will be required to confirm that the Draft Design Agreements submitted as part of the Draft Design Agreements Submission (as modified pursuant to written conformance feedback provided pursuant to RFP Section 4.1(6)) will be fully executed on or before DPA Close;
 - (b) subject to the results of any negotiations carried out in accordance with RFP Section 10.2, the Proponent shall not be permitted to modify the Draft Design Agreements following the RFP Proposal Submission Deadline without the written consent of the Sponsors; and
 - (c) if the Proponent is identified as the Shortlisted Proponent under this RFP, it shall be required to execute and deliver the Assignment of Project Documents in accordance with RFP Section 10.2.

4.2 Draft Dev Co Structure Submission

- (1) Each Proponent acknowledges that the Sponsors wish to review each Proponent's Draft Dev Co Structure which the Proponent intends to implement on or before DPA Close if the Proponent is identified as the Shortlisted Proponent under this RFP pursuant to RFP Section 9.1.
- (2) The requirements that the Draft Dev Co Structure must satisfy are set out in the RFP Data Sheet.
- (3) Each Proponent shall submit its Draft Dev Co Structure and related documentation described in the RFP Data Sheet to the Sponsors on or before the Draft Dev Co Structure Submission Deadline (the "**Draft Dev Co Structure Submission**").

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- (4) Proponents shall submit their Draft Dev Co Structure 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 Dev Co Structure Submission is received by the Sponsors prior to the Draft Dev Co Structure Submission Deadline.
 - (5) The Sponsors will review the Draft Dev Co Structure Submission. Nothing in the Draft Dev Co Structure Submission shall be or shall be deemed to be part of the RFP Proposal and shall not be evaluated under this RFP.
 - (6) The Sponsors may, in their sole discretion, provide written conformance feedback to the Proponent on its Draft Dev Co Structure 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) no part of the evaluation of its RFP Proposal will be based on such feedback; and
 - (b) 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 Final Project Agreement, the Project or otherwise.
 - (7) The Proponent acknowledges that:
 - (a) in the RFP Proposal Submission Form, it will be required to confirm that the Draft Dev Co Structure Submission will be implemented (and applicable documents executed) on or before DPA Close; and
 - (b) subject to the results of any negotiations carried out in accordance with RFP Section 10.2, the Proponent shall not be permitted to modify the Draft Dev Co Structure following the RFP Proposal Submission Deadline without the written consent of the Sponsors.

5 RFP PROPOSAL FORM AND CONTENT REQUIREMENTS

5.1 Format and Content of the RFP Proposal

- (1) Proponents shall submit RFP Proposals organized in accordance with and in the format set out in Schedules 3 to 9 to this RFP.
- (2) Proponents shall submit RFP Proposals, consisting of the following parts:
 - (a) Part A – RFP Proposal Submission Documents, including:
 - (i) the RFP Proposal Submission Form (Schedule 4 to this RFP);
 - (ii) the RFP Proposal Participant Conflict Screening List (Schedule 5 to this RFP);

- (iii) a Proponent Team Member Declaration (Schedule 6 to this RFP) for each Proponent Team Member;
 - (iv) a Certificate of Officer (Schedule 7A to this RFP) for each Proponent Team Member;
 - (v) an Accounting Firm Letter (Schedule 7B to this RFP) for each Construction Prime Team Member; and
 - (vi) the RFP Proposal non-scoring submission, submitted pursuant to Part A of Part 1 of Schedule 3 of this RFP.
- (b) Part B - the RFP Proposal Technical Submission Information (the “**RFP Proposal Technical Submission**”); and
- (c) Part C – the RFP Proposal Commercial Submission Information, including:
- (i) the documents specified in Section 1.1 of Part C of Part 1 of Schedule 3 of this RFP
 - (ii) the Commercial Submission Form (Appendix 4 of Part 1 of Schedule 3 to this RFP); and
 - (iii) the Surety’s Consent (Schedule 9A to this RFP),
- (collectively, the “**RFP Proposal Commercial Submission**”):
- (3) Proponents shall submit each of Parts A, B and C of their RFP Proposals in accordance with the requirements and instructions set out in the RFP Documents.

5.2 Submission of Surety’s Consent

5.2.1 Surety’s Consent

- (1) Each Proponent must submit a surety’s consent as set out in Schedule 9A – Form of Surety’s Consent to this RFP (a “**Surety’s Consent**”) in order to secure the issuance of a performance bond and a labour and material payment bond for the Early Works as required by the Development Phase Agreement. Proponents are advised that, in submitting the Surety’s Consent, the Proponent may submit either,
- (a) a Surety’s Consent duly completed by a Surety substantially in the same form and content as set out in Schedule 9A – Form of Surety’s Consent to this RFP, including the form of performance bond and labour and material payment bond attached; or
 - (b) a Surety’s Consent duly completed by a Surety substantially in the form set out in Schedule 9A – Form of Surety’s Consent to this RFP including attached forms of a performance bond and a labour and material payment bond which, having regard to the intended purpose

of the Development Phase Agreement, the Proponent can demonstrate will result in value for money to the Sponsors.

- (2) If the Proponent submits a Surety’s Consent pursuant to RFP Section 5.2.1(1)(b) the Sponsors may, in their sole discretion, accept or reject the form of Surety’s Consent including the proposed form of performance and labour and material payment bonds attached to the Surety’s Consent submitted by the Proponent (the “**Bonding Submission**”).
- (3) If the Sponsors reject a Proponent’s Bonding Submission the Sponsors may, in their sole discretion, either reject the Proponent’s RFP Proposal in its entirety or advise the Proponent as to any changes that the Sponsors may require to the Bonding Submission and negotiate the form of Surety’s Consent (a “**Revised Bonding Submission**”) to meet those requirements, including the resubmission of:
 - (a) the proposed form of performance and labour and material payment bonds attached to the Surety’s Consent;
 - (b) any ancillary amendments to the Development Phase Agreement that may be required; and
 - (c) any change that may be required in the Proponent’s RFP Proposal resulting from the changes to the Bonding Submission.
- (4) If the Sponsors and the Proponent agree to a Revised Bonding Submission, the Sponsors may require the Proponent to submit the agreed form of Revised Bonding Submission to the Sponsors prior to Shortlisted Proponent notification. The Sponsors shall retain the right to accept, at any stage of the negotiations, the Proponent’s initial form of Surety’s Consent, including the proposed form of performance and labour and material payment bonds, submitted in the Proponent’s RFP Proposal.
- (5) In negotiating the Revised Bonding Submission, the parties shall act reasonably in good faith and if, notwithstanding such good faith efforts, the Proponent and the Sponsors fail to arrive at an agreed form of Revised Bonding Submission and the Sponsors do not elect to accept the Proponent’s initial form of Surety’s Consent, including the proposed form of performance and labour and material payment bonds submitted in the Proponent’s RFP Proposal, then the Sponsors may reject the Proponent’s RFP Proposal.

6 SUBMISSION, WITHDRAWAL, MODIFICATION OF THE RFP PROPOSAL

6.1 Submission of RFP Proposal

- (1) Each Proponent shall submit its RFP Proposal on or before the RFP Proposal Submission Deadline using the Electronic Submission and Evaluation System identified in the RFP Data Sheet.
- (2) Each Proponent shall submit its RFP Proposal in three (3) parts, as follows:
 - (a) the first part shall constitute the Proponent’s RFP Proposal Submission Documents;
 - (b) the second part shall constitute the Proponent’s RFP Proposal Technical Submission; and

- (c) the third part shall constitute the Proponent's RFP Proposal Commercial Submission.
- (3) For the purposes of the RFP Process, the determination of whether the RFP Proposal has been submitted on or before the RFP Proposal Submission Deadline shall be based on the latest (in time) electronic time and date stamp which the Proponent receives from the Electronic Submission and Evaluation System identified in the RFP Data Sheet in relation to the three (1) parts of its RFP Proposal submitted pursuant to RFP Section 6.1(1).
- (4) An RFP Proposal received after the RFP Proposal Submission Deadline, as documented by the electronic time and date stamp, shall remain unopened.
- (5) Proponents shall submit their RFP Proposal using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the RFP Proposal is received by Infrastructure Ontario prior to the RFP Proposal Submission Deadline, and to ensure each receives an electronic time and date stamp receipt from the Electronic Submission and Evaluation System confirming its timely delivery. The Sponsors will not accept an RFP Proposal delivered by electronic mail.
- (6) Proponents shall provide electronic copies of their RFP Proposal in the formats specified in Part 2 of Schedule 3 – RFP Proposal Format and Evaluation to this RFP.
- (7) If there is any difference whatsoever between the electronic copies of the RFP Proposal in PDF format and native file format of such RFP Proposal submitted through the Electronic Submission and Evaluation System, the copy of the RFP Proposal in the PDF format submitted through the Electronic Submission and Evaluation System shall govern.

6.2 Withdrawal of RFP Proposals

- (1) Subject to 6.2(2), a Proponent may withdraw its RFP Proposal at any time during the RFP Process by notifying the Contact Person in writing.
- (2) Following DPA Close, neither the Shortlisted Proponent nor the Successful Proponent (as Dev Co) shall be entitled to withdraw its RFP Proposal, which, for greater certainty, in accordance with the Development Phase Agreement, shall be superseded entirely by the Development Phase Agreement and rendered null and void.

6.3 Amendment of RFP Proposal

- (1) A Proponent may amend its RFP Proposal after submission but only if a revised replacement RFP Proposal is submitted before the RFP Proposal Submission Deadline in accordance with the following:
- (a) the Proponent shall withdraw its original RFP Proposal by using the Electronic Submission and Evaluation System before the RFP Proposal Submission Deadline; and
- (b) the Proponent shall submit a revised replacement RFP Proposal in accordance with the RFP Documents, including the requirements of RFP Section 6.1.

6.4 RFP Proposal Validity Period

- (1) Subject to RFP Section 11.1 and the Proponent's right to withdraw its RFP Proposal pursuant to RFP Section 6.2, the Proponent's RFP Proposal will remain valid and in effect until the PA Effective Date (the "**RFP Proposal Validity Period**").

6.5 Extension of RFP Proposal Validity Period

- (1) Subject to a Proponent's right to withdraw its RFP Proposal pursuant to RFP Section 6.2, if the Sponsors wish to extend the RFP Proposal Validity Period, the Sponsors shall submit a request to extend to those Proponents whose RFP Proposals in the Sponsors' sole discretion, are still under consideration in the RFP Process. A Proponent may, in its discretion, refuse to extend the RFP Proposal Validity Period in accordance with the following:
 - (a) notwithstanding a Proponent's refusal to extend the RFP Proposal Validity Period, that Proponent's RFP Proposal shall continue to be valid in accordance with the original RFP Proposal Validity Period; and
 - (b) if the Sponsors determine that they will be unable to determine the Shortlisted Proponent prior to the expiration of the original RFP Proposal Validity Period, the Sponsors may discontinue the evaluation or consideration of a Proponent if that Proponent has refused the Sponsors' request to extend the RFP Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the RFP Proposal Validity Period.

7 EVALUATION, CLARIFICATION AND VERIFICATION OF RFP PROPOSALS

7.1 Evaluation Committee and Advisors

- (1) The Sponsors will establish an evaluation committee (the "**Evaluation Committee**") for the purpose of evaluating RFP 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.

7.2 Sponsors' Clarification and Verification of RFP Proposals

- (1) The Sponsors may:
 - (a) require the Proponent to clarify or verify the contents of its RFP Proposal or any statement made by the Proponent, including at any Commercially Confidential Meeting or at any Proponent Interview;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its RFP Proposal, or any statement made by the Proponent, including at any Commercially Confidential Meeting or at any Proponent Interview;
 - (c) seek a Proponent's acknowledgement of the Sponsors' interpretation of the RFP Proposal or any part of the RFP Proposal; and/or
 - (d) seek comment from any third party references specified in the Proponent's RFP Proposal so as to verify matters contained in its RFP Proposal.
- (2) The Sponsors are not obliged to seek clarification or verification of any aspect of an RFP Proposal or any statement by a Proponent, including any ambiguity in an RFP 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 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 RFP Proposal.

7.3 Determination of Compliance

- (1) For purposes of this RFP, an RFP Proposal is "**non-compliant**" and does not "**comply**" or achieve "**compliance**" with the requirements of the RFP Documents if an RFP Proposal contains a "**Material Deviation**". A Material Deviation is any failure in an RFP 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 RFP Proposal;
 - (b) constitutes an attempt by the 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 Proponent to revise the Sponsors' or the Proponent's rights or obligations under the Draft Development Phase Agreement (including under Schedule 12 – Draft Project Agreement of the Draft Development Phase Agreement), the Design Agreements, or the Assignment of Project Documents.

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- (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 7.3.
 - (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 11.3(3).
 - (4) The Sponsors may identify a Material Deviation in an RFP Proposal at any time during the RFP Process and, for clarity, at any step during the evaluation process set out in RFP Section 7.5, other than following DPA Close in the RFP Proposal of the Shortlisted Proponent or the Successful Proponent. For clarity, if any such Material Deviation in the RFP Proposal of the Shortlisted Proponent or the Successful Proponent were identified following DPA Close, such Material Deviation would be dealt with subject to and in accordance with the terms of the Development Phase Agreement.
 - (5) Subject to RFP Section 7.3(3)(b), if the Sponsors determine that an RFP Proposal is non-compliant in accordance with this RFP Section 7.3, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare that the RFP Proposal shall not be given any further consideration and take such action as permitted under RFP Section 7.2. If a declaration by the Sponsors that an RFP Proposal is non-compliant occurs after the scoring of that RFP Proposal has commenced, any scores given to that RFP Proposal shall be declared null and void.

7.4 Non-Compliance Distinguished from Poor Quality

- (1) An RFP 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 7.3(1).
- (2) A technical compliance or conformance review is only a tool to assist in the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of the RFP Proposal Technical Submissions. Notwithstanding the similarity of terminology, the determination of whether an RFP 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 an RFP Proposal.
- (3) The quality of an RFP Proposal, an assessment of which is made during the evaluation and scoring of that RFP Proposal and which is separate and distinct from the assessment of the compliance of an RFP Proposal, may be subject to one or more minimum scoring thresholds in accordance with Part 2 to Schedule 3 – RFP Proposal Format and Evaluation to this RFP.

- (4) An RFP Proposal that does not contain any Material Deviations shall not be automatically presumed to pass any applicable minimum scoring threshold as set out in Part 2 of Schedule 3 – RFP Proposal Format and Evaluation to this RFP. Any assessment of “technical compliance” or “technical conformance and/or non-conformance” or any other assessment of quality of an RFP Proposal shall not result in any presumed score for that RFP Proposal.
- (5) The submission of a compliant RFP Proposal that contains a poor quality response and/or any failure by a Proponent to conform with any requirement of the RFP Documents which is not a Material Deviation does not derogate from the obligations of the Shortlisted Proponent pursuant to RFP Section 10.2, or of the Shortlisted Proponent (as Dev Co) under the Development Phase Agreement to bring all aspects of a Proponent’s RFP 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.

7.5 Steps in the Evaluation Process

7.5.1 Step 1 – Compliance of RFP Proposal Submission Documents

- (1) In Step 1 of the evaluation process, the Sponsors will open each RFP Proposal Submission Document and will review the contents of the RFP Proposal Submission Documents 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 an RFP Proposal Submission Documents, then, subject to RFP Section 7.3(3)(b), the Sponsors may determine that the RFP Proposal to which the RFP Proposal Submission Documents relates is non-compliant in accordance with RFP Section 7.3 and take such action as described in RFP Section 7.3(5).
- (3) In the event that the Sponsors declare an RFP Proposal to be non-compliant before the opening of the RFP Proposal Technical Submission, then the unopened RFP Proposal Technical Submission of that Proponent will remain unopened and will not be evaluated.

7.5.2 Step 2 – Review of the RFP Proposal Submission Form

- (1) In Step 2 of the evaluation process, the Sponsors shall review the RFP Proposal Submission Form to:
 - (a) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submissions, 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 RFP Proposal Submission Form.

7.5.3 Step 3 – Review, Scoring and Interview in respect of the RFP Proposal Technical Submissions

- (1) In Step 3 of the evaluation process, subject to RFP Section 7.5.3(3), the RFP Proposal Technical Submissions will be evaluated and scored in accordance with Part 1 – RFP Proposal Submission Requirements and Part 2 of Schedule 3 – RFP Proposal Format and Evaluation to this RFP.

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- (2) If a Proponent fails to achieve any of the minimum scores or minimum aggregate weighting thresholds as set out in the applicable provisions of Part 2 of Schedule 3 – RFP Proposal Format and Evaluation 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 RFP Proposal will continue to be considered in the RFP Process.
 - (3) In the event that a Proponent’s RFP Proposal Technical Submission fails to achieve any of the minimum scores or minimum aggregate weighting thresholds as set out in the applicable provisions of Part 2 of Schedule 3 - RFP Proposal Format and Evaluation to this RFP and the Sponsors do not exercise their discretionary rights as set out in RFP Section 7.5.3(2), the Proponent’s RFP Proposal will not continue to Step 4 of the evaluation process. Additionally, the RFP Proposal Commercial Submission of that Proponent will remain unopened and will not be evaluated.
 - (4) If the Sponsors are to conduct Proponent Interviews with Proponents pursuant to RFP Section 3.12 as part of the evaluation process of this RFP Section 7.5.3, the results of such Proponent Interviews with the Proponent will be evaluated and scored in accordance with Part 2 of Schedule 3 – RFP Proposal Format and Evaluation to this RFP, and the evaluation and scoring of the Proponent’s RFP Proposal Technical Submission will be subject to the evaluation and scoring attributable to the results of such Proponent Interviews.
 - (5) If a Proponent fails to attend the Proponent Interviews contemplated pursuant to RFP Section 3.12, then, as part of Step 3 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsors may, in their sole discretion, determine whether that Proponent’s RFP Proposal will continue to be considered in the RFP Process, and in any event, such failure to attend may have an adverse impact on the score assigned to such Proponent’s RFP Proposal Technical Submission.

7.5.4 Step 4 – Compliance of RFP Proposal Commercial Submissions

- (1) In Step 4 of the evaluation process, the Sponsors will open each RFP Proposal Commercial Submission and will review the contents of the RFP Proposal Commercial 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 an RFP Proposal Commercial Submission then, subject to RFP Section 7.3(3)(b), the Sponsors may determine that the RFP Proposal to which the RFP Proposal Commercial Submission relates is non-compliant in accordance with RFP Section 7.3 and take such action as described in RFP Section 7.3(5).

7.5.5 Step 5 – Review and Scoring of the RFP Proposal Commercial Submissions

- (1) In Step 5 of the evaluation process, the RFP Proposal Commercial Submissions will be evaluated and scored in accordance with Part 1 of Schedule 3 – RFP Proposal Submission Requirements and Part 2 of Schedule 3 – RFP Proposal Format and Evaluation to this RFP.

7.5.6 Step 6 – Establishing an RFP Proposal Initial Score

- (1) In Step 6 of the evaluation process, upon receipt by, and acceptance of, the Evaluation Committee of the results of the evaluation process, the initial score for each RFP Proposal will be tallied and finalized.
- (2) The Evaluation Committee shall identify up to two Proponents with the highest RFP Proposal Initial Scores (the “**Second Round Proponents**”) and invite the Second Round Proponents to participate in Collaborative and Behavioural Assessments.
- (3) The score established based on this RFP Section 7.5.6 shall be the “**RFP Proposal Initial Score**”.

7.5.7 Step 7 - Scoring of the Collaborative and Behavioural Assessment

- (1) In Step 7 of the evaluation process, the Sponsors will undertake the Collaborative and Behavioural Assessment with the Second Round Proponents. Each Second Round Proponent's attendance at, participation in, and performance during the Collaborative and Behavioural Assessment will be evaluated and scored in accordance with Part 2 of Schedule 3 - RFP Proposal Format and Evaluation to this RFP.
- (2) The Collaborative and Behavioural Assessment will take place at any time after the completion of Step 6 of the evaluation process.
- (3) If a Second Round Proponent fails to attend the Collaborative and Behavioural Assessment then, as part of Step 7 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsors may, in their sole discretion, determine whether that Second Round Proponent's RFP Proposal will continue to be considered in the RFP Process, and in any event, such failure to attend may have an adverse impact on the score assigned to such Proponent's RFP Proposal Technical Submission.

7.5.8 Step 8 – Establishing a Final RFP Proposal Score

- (1) For the purpose of the evaluation process, the weightings and scoring set out in Part 2 of Schedule 3 - RFP Proposal Format and Evaluation to this RFP will apply.
- (2) In Step 8 of the evaluation process, upon receipt by, and acceptance of, the Evaluation Committee of the results of the evaluation process and finalization of the scores of all Proponents' RFP Proposals, the score for each RFP Proposal will be tallied and finalized.
- (3) The score established for each RFP Proposal based on this RFP Section 7.5.8 shall be the “**Final RFP Proposal Score**”.

7.5.9 Step 9 – Ranking the Proponents

- (1) In Step 9 of the evaluation process, the Evaluation Committee shall rank only those Proponents that have been evaluated and passed through Steps 1 through 8 of the evaluation process and shall base the ranking on the Final RFP Proposal Score determined in Step 8.

- (2) The Evaluation Committee shall identify the highest ranked Proponent based upon the Final RFP Proposal Score, which Proponent shall be identified as the Shortlisted Proponent and be invited to execute the Draft Development Phase Agreement with the Sponsors.
- (3) For the purposes of this Step 9 and the evaluation process, the Proponent which is not a Second Round Proponent will be deemed to be the lowest ranked Proponent.
- (4) In the event of a tie in the Final RFP Proposal Score between the two Second Round Proponents, the Sponsors may, in their sole discretion, give the higher ranking to the Proponent that has scored higher in the RFP Proposal Technical Submission, who shall be identified as the Shortlisted Proponent and be invited to execute the Draft Development Phase Agreement with the Sponsors. In the event there is a tie in the RFP Proposal Technical Submission scores, then the Proponent having the higher RFP Proposal Commercial Submission score will become the Shortlisted Proponent. In the event there is a tie in the RFP Proposal Commercial Submission scores, then the Proponent having the higher Collaborative and Behavioural Assessments score will become the Shortlisted Proponent.

8 GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

8.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

- (1) The Sponsors shall, in their sole discretion, determine:
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether an RFP Proposal is compliant with the RFP Documents;
 - (c) whether a failure to comply constitutes a Material Deviation;
 - (d) whether Key Individuals are unacceptable to the Sponsors;
 - (e) the Final RFP Proposal Score of an RFP Proposal;
 - (f) the rankings of the RFP Proposals; and
 - (g) whether an RFP Proposal or a 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 Proponents and their RFP Proposals is not limited or restricted in any way by the fact that a prequalification process preceded this RFP Process.
- (3) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of the RFP Proposals or in the exercise of any of the Sponsors' rights under this RFP:

- (a) any instances of poor performance by a Proponent or any of its Proponent Team Members that the Sponsors have experienced; and/or
 - (b) any publicly available information about a 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 an RFP 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 an RFP Proposal that exceed the maximum number of pages specified for the applicable portion of the RFP Proposal.

8.2 Disqualification

- (1) Subject to RFP Section 8.2(1), the Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member or an RFP Proposal, or reverse their decision to (i) select a Shortlisted Proponent to proceed to the DPA Phase and execute the Draft Development Phase Agreement with the Sponsors, or (ii) make an award (even if the award has already been made to a Shortlisted Proponent or a Successful Proponent under this RFP) at any time prior to the PA Effective Date, if
- (a) the RFP Proposal is determined to be non-compliant pursuant to RFP Section 7.3;
 - (b) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its RFP Proposal during the Collaborative and Behavioural Assessments or during a Proponent Interview;
 - (c) the Proponent contravenes RFP Section 3.3.2 or RFP Section 3.3.3;
 - (d) the Proponent fails to comply with Applicable Law;
 - (e) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;
 - (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates are or become a Restricted Person;
 - (g) the RFP Proposal, including any officer's certificate or any form attached to the RFP Proposal, contains false or misleading information or a misrepresentation;
 - (h) 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 RFP Proposal) that would materially adversely affect the Sponsors' evaluation of the RFP Proposal or review and assessment of the Project Proposal under the Development Phase Agreement;
 - (i) the RFP Proposal or Project Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Proponent

- (i) 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
 - (ii) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
- (j) in the 36 months prior to the RFP Proposal 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;
- (k) 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 RFP Proposal, or Project Proposal if applicable, or otherwise contravened RFP Section 3.3.4;
- (l) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (m) 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;
- (n) 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;
- (o) 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;
- (p) the Proponent or a Proponent Team Member fails to attend a Collaborative and Behavioural Assessment;
- (q) in relation to the Shortlisted Proponent, the Shortlisted Proponent fails to execute the Draft Development Phase Agreement in accordance with RFP Section 10.2;

- (r) in relation to the Shortlisted Proponent or the Successful Proponent (as Dev Co), a Dev Co Event of Default occurs; or
 - (s) in relation to the Shortlisted Proponent or the Successful Proponent (as Dev Co), the Development Phase Agreement is terminated by the Sponsors in accordance with its terms.
- (2) RFP Sections 8.2(1)(a), 8.2(1)(b) and 8.2(1)(p) shall not apply to the Shortlisted Proponent or the Successful Proponent (as Dev Co) following DPA Close.

9 COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A SHORTLISTED PROPONENT AND SUCCESSFUL PROPONENT

9.1 Evaluation Results and the Identification of a Shortlisted Proponent

- (1) Based on the Final RFP Proposal Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the RFP Proposal Validity Period identify in writing the highest ranked Proponent as the Shortlisted Proponent and, subject to the Sponsors' satisfaction with the outcome of any negotiations carried out pursuant to RFP Section 9.1(3), enter into the Development Phase Agreement with such Shortlisted Proponent.
- (2) Based on the Final RFP Proposal Scores, the Sponsors will also identify the second highest ranking Proponent (the "**Second Ranked DPA Phase Proponent**") and the third highest ranking Proponent (the "**Third Ranked DPA Phase Proponent**"). Prior to the expiry of the RFP Proposal Validity Period:
- (a) in respect of the RFP Proposal of the Second Ranked DPA Phase Proponent, if:
 - (i) the first selected Shortlisted Proponent is not selected by the Sponsors as the Successful Proponent during the DPA Phase; or
 - (ii) the Development Phase Agreement with the Shortlisted Proponent (as Dev Co) is otherwise terminated in accordance with its terms at any time during the DPA Phase,then, the Sponsors may, in their sole discretion and subject to the Sponsors' satisfaction with the outcome of any negotiations carried out pursuant to RFP Section 9.1(3), enter into a development phase agreement with the Second Ranked DPA Phase Proponent and proceed through the DPA Phase with the Second Ranked DPA Phase Proponent; and
 - (b) in respect of the RFP Proposal of the Third Ranked DPA Phase Proponent, if:
 - (i) the Second Ranked DPA Phase Proponent and the Sponsors' do not enter into a development phase agreement pursuant to RFP Section 9.1(2)(a);
 - (ii) the Second Ranked DPA Phase Proponent is not selected by the Sponsors as the Successful Proponent during the DPA Phase pursuant to the terms of a development phase agreement or

- (iii) the development phase agreement with the Second Ranked DPA Phase Proponent is otherwise terminated in accordance with its terms at any time during the DPA Phase,

then, the Sponsors may, in their sole discretion and subject to the Sponsors' satisfaction with the outcome of any negotiations carried out pursuant to RFP Section 9.1(3), enter into a development phase agreement with the Third Ranked DPA Phase Proponent and proceed through the DPA Phase with the Third Ranked DPA Phase Proponent.

- (3) The Sponsors may negotiate any aspect of the RFP Proposal of a Shortlisted Proponent, a Second Ranked DPA Phase Proponent or a Third Ranked DPA Phase Proponent, or the Draft Development Phase Agreement, or both.
- (4) Notwithstanding any negotiations between the Sponsors and the Proponents, but subject to a Proponent's right to withdraw its RFP Proposal, the RFP Proposals of all Proponents (other than the Shortlisted Proponent's RFP Proposal following DPA Close) shall remain valid and in effect until the expiration of the RFP Proposal Validity Period in accordance with RFP Section 6.4.

9.2 Identification of a Successful Proponent

- (1) The Sponsors may identify the Successful Proponent pursuant to the Development Phase Agreement (as amended from time to time).

10 SHORTLISTED PROPONENT

10.1 Identification of the Shortlisted Proponent

- (1) Subject to RFP Sections 11.1 and 11.3, the Sponsors intend to identify a Shortlisted Proponent in accordance with RFP Section 9.1.

10.2 Shortlisted Proponent Obligations

- (1) Subject to the Sponsors' satisfaction with the outcome of any negotiations carried out pursuant to RFP Section 9.1(3), the Shortlisted Proponent shall:
 - (a) achieve DPA Close,
 - (i) prior to 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 RFP Proposal Validity Period (or the extended RFP Proposal Validity Period, if applicable),

based on the Draft Development Phase Agreement and the Assignment of Project Documents in substantially the same form and content as finalized prior to the RFP Proposal Submission Deadline or, in the case of the Draft Development Phase Agreement or the Assignment of Project Documents, as revised and agreed to by the Shortlisted 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 Shortlisted Proponent's corporate structure (including a partnership structure) which are not inconsistent with the principles set out in the Draft Development Phase Agreement and the Assignment of Project Documents;
 - (B) the insertion or addition of information or the modification of provisions of the Draft Development Phase Agreement and the Assignment of Project Documents required in order to reflect accurately the nature of the Shortlisted Proponent's relationships with its principal subcontractors; or
 - (C) the revision of provisions in the Draft Development Phase Agreement and the Assignment of Project Documents to more accurately reflect the result of negotiations in accordance with RFP Section 9.1;
 - (iii) changes, additions and modifications required in order to complete (based on the RFP Proposal) any provision of the Draft 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 Draft Development Phase Agreement or the Assignment of Project Documents; and
 - (iv) changes, additions and modifications to those parts of the Draft 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 10.2(1)(b) are consistent with the principles set out in the Draft Development Phase Agreement and the Assignment of Project Documents, are consistent with RFP Section 10.2(3), 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 to the Sponsors the draft execution forms of the Initial Draft DPA Subcontracts other than the Draft Design Agreements, each in a form that satisfies the applicable requirements set out in the Development Phase Agreement, including DPA Section 10.7;
 - (e) on or before DPA Close, delivery or cause to be delivered to the Sponsors:

- (i) fully executed copies of the Design Agreements and other Initial DPA Subcontracts that Dev Co will enter into on or before DPA Close, each in a form that satisfies the applicable requirements of the Draft Development Phase Agreement, including Section 10.7 of the Draft Development Phase Agreement;
 - (ii) in accordance with RFP Section 10.2(4), any Assignments of DPA Subcontracts required by the Sponsors; and
 - (iii) all other DPA Completion Documents as set out in Schedule 12 – DPA Completion Documents to this RFP.
- (2) The Shortlisted 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.
- (3) The Shortlisted 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 RFP 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 RFP Proposal into the Dev Co Proposal Extracts where the Shortlisted Proponent demonstrates to the Sponsors that incorporating such part of the RFP Proposal into the Dev Co Proposal Extracts (the “**Specific Proposal Part**”) without also incorporating a related specific part(s) of the RFP 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 RFP 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, its RFP Proposal will be superseded entirely by the Development Phase Agreement and rendered null and void in accordance with the Development Phase Agreement.
- (4) The Shortlisted 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 Shortlisted 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 RFP 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 the Contracting Authority pursuant to the Assignment of Project Documents. The Sponsors may, in their sole discretion, revise the Draft Development Phase Agreement (including Schedule 15 – 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, 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 Section 10.7 of the Development Phase Agreement.

10.3 The Sponsors – Authorization and Approvals

- (1) The Shortlisted 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.

11 GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

11.1 RFP Not a “Bidding Contract” or a Tender

- (1) Notwithstanding any other provision of this RFP, this RFP is not a tender and is not an offer to enter into either a bidding contract (often referred to as “Contract A”) or a contract to carry out the DPA Works or the Project (often referred to as “Contract B”). Except as provided in RFP Sections 11.4 and 3.8.3 and the Development Phase Agreement, neither this RFP nor the submission of an RFP Proposal by a Proponent shall create any legal or contractual rights or obligations whatsoever on any of the Proponent, the Sponsors, the Government of Ontario or any Ministry of the Government of Ontario. Except as provided in RFP Sections 11.4 and 3.8.3, no legal relationship or obligation of any kind whatsoever shall be created between the Proponent, the Sponsors, the Government of Ontario or any Ministry of the Government of Ontario until such time as the Proponent is identified as the Shortlisted Proponent and has executed and delivered a Development Phase Agreement.

11.2 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion:
 - (a) reject any or all of the RFP Proposals;
 - (b) reject the Key Individuals proposed in an RFP Proposal and, if not satisfactorily substituted, reject the RFP Proposal;
 - (c) accept any RFP Proposal and enter into a Development Phase Agreement with the Shortlisted Proponent, the Second Ranked DPA Phase Proponent or the Third Ranked DPA Phase Proponent;
 - (d) if only one RFP Proposal is received, elect to accept or reject it or enter into a Development Phase Agreement 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 Successful Proponent but before the PA Effective Date;
- (f) alter the Timetable, the RFP Process or any other aspect of this RFP; and
- (g) cancel this 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,

provided that only RFP Sections 11.2(e), 11.2(f) and 11.2(g) shall be applicable to the Shortlisted Proponent and the Successful Proponent following DPA Close, and the application of such provisions shall be subject to the applicable provisions of the Development Phase Agreement. For greater certainty, nothing in this RFP shall limit the right of Contracting Authority under the Development Phase Agreement to terminate the Development Phase Agreement in accordance with its terms.

- (2) As part of a Proponent's RFP Proposal, each Proponent Team Member of any Proponent is required to provide a certificate of an officer from such Proponent Team Member in the form attached as RFP Schedule 7A – Certificate of Officer to this RFP. Each Construction Prime Team Member 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. 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, require at any time, including any time after a Proponent has submitted its RFP Proposal, that any Proponent Team Member of any Proponent provide or resubmit a Certificate of 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 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 or ethical behaviour 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 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.
- (4) Further to RFP Section 11.2(3), and in the event that any Proponent and/or Proponent Team Member:

- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to RFP Section 11.2(3); or
- (b) complies with Sponsors' requirement as prescribed in accordance with RFP Section 11.2(3), but the Sponsors determine that any Proponent and/or Proponent Team Member has or may have engaged in inappropriate bidding practices or unethical behaviour,

the Sponsors shall have the right, at any time and in their sole discretion to reject and not consider an RFP Proposal from a Proponent, to require the Proponent to remove and/or replace any Proponent Team Member pursuant to RFP Section 3.6, or to otherwise elect not to proceed further in the procurement process with such Proponent.

11.3 Special Circumstances

- (1) If the Sponsors determine that all of the RFP Proposals submitted are non-compliant in accordance with RFP Section 7.3, the Sponsors may, in their sole discretion:
 - (a) take any action in accordance with RFP Section 11.1;
 - (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their RFP Proposals for re-submission; or
 - (c) enter into negotiations with any one or more of the Proponents to attempt to finalize an agreement and enter into a Development Phase Agreement
- (2) If the Sponsors receive,
 - (a) one RFP Proposal and that RFP Proposal is compliant; or
 - (b) more than one RFP Proposal, but only one compliant RFP Proposal,the Sponsors may, in their sole discretion:
 - (i) take any action in accordance with RFP Section 11.2(1); or
 - (ii) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a compliant RFP Proposal, or enter into a Development Phase Agreement with the Proponent that submitted a compliant RFP Proposal.
- (3) The Sponsors may, in their sole discretion, waive a Material Deviation in an RFP 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 RFP Proposal.
- (4) If at any time prior to the RFP Proposal Submission Deadline, a Proponent is disqualified or withdraws from the RFP Process, the Sponsors may, in their discretion, invite a Reserve Prequalified Party to participate in the RFP Process. Prior to and as a condition of becoming a Prequalified Party and a Proponent under this RFP, such Reserve Prequalified Party shall be required to satisfy the requirements of Section 5.2(2) of the RFQ. Upon the satisfaction of such

conditions, such Reserve Prequalified Party shall become a Prequalified Party and a Proponent under this RFP.

11.4 Sponsors' Liability for Proponent's Costs

11.4.1 General

- (1) Except as provided in RFP Section 11.4.2, neither the Sponsors nor 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 11.2 or 11.3.

11.4.2 RFP Proposal Fee

- (1) If the Sponsors specify in the RFP Data Sheet that they offer an RFP Proposal Fee for this Project, such RFP Proposal Fee plus any applicable HST shall be paid by the Sponsors to each Proponent other than the Shortlisted Proponent that entered into the Development Phase Agreement, subject to the following conditions:
 - (a) a Proponent must submit a full and proper RFP Proposal for that Proponent to be eligible for the RFP Proposal Fee, provided that the Sponsors shall determine whether an RFP Proposal is full and proper based on factors that include whether the RFP Proposal is compliant with this RFP (as determined in accordance with RFP Section 7.3) and whether the RFP Proposal received a Final RFP Proposal Score with respect to its RFP Proposal Technical Submission of at least 50%; and
 - (b) a Proponent must not withdraw from this RFP Process after the RFP Proposal Submission Deadline.
- (2) The amount of the RFP Proposal Fee that will be paid by the Sponsors to each eligible Proponent in accordance with RFP Section 11.4.2(1) is set out in the RFP Data Sheet. Any additional requirements for Proponents to take into consideration in relation to the RFP Proposal Fee are set out in the RFP Data Sheet.
- (3) Payment of an RFP Proposal Fee shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Proponent and Proponent Team Members in connection with this RFP, and the Sponsors' obligation to pay the RFP Proposal Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from the Proponent and Proponent Team Members to that effect.

11.4.3 Break Fee

- (1) Any Break Fee offered by the Sponsors for the Project shall be set out in the RFP Data Sheet and, subject to RFP Section 11.4.3(5), shall only be paid by the Sponsors when the Sponsors have been satisfied that:
 - (a) the Proponent has demonstrated that it has been an active participant through the RFP Process;

- (b) the Proponent has provided substantiation of its active participation in the RFP Process as requested by the Sponsors; and
 - (c) any other requirements in respect of the Break Fee set out in the RFP Data Sheet have been satisfied.
- (2) The amount of the Break Fee payable to each eligible Proponent is set out in the RFP Data Sheet. At any time following the cancellation of the RFP Process, and subject to the Sponsors obtaining any necessary approvals, including from the Province, the Sponsors in their sole discretion may increase the amount of the Break Fee.
- (3) Payment of a Break Fee shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Proponent and Proponent Team Members in connection with this RFP, and the Sponsors' obligation to pay the Break Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from the Proponent and Proponent Team Members of all such obligations and liabilities.
- (4) If the RFP Process is cancelled, a Proponent shall only be eligible to receive a Break Fee and the Proponent will not be eligible to receive a RFP Proposal Fee as well. For greater certainty, a Proponent shall not be eligible to receive both a Break Fee and a RFP Proposal Fee relating to the Proponent's participation in the RFP Process for this Project.
- (5) Each Proponent acknowledges and agrees that the obligation for the Sponsors to pay a Break Fee pursuant to this RFP is conditional on and subject to the Sponsors obtaining any necessary approvals in respect of making such payment, including from the Province.

11.5 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 11.5.
- (3) Notwithstanding that the submission of an RFP Proposal is not a tender and is not intended to and does not create a bidding contract or "Contract A" but without limiting any provision of the Development Phase Agreement, each 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 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 lesser of (a) the Proponent's cost of preparing its RFP Proposal, and (b) the Break Fee.

11.6 Licences, Permits, etc.

- (1) If a Proponent is required by Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its RFP Proposal or in the Draft Development Phase Agreement, neither acceptance of the RFP 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.

11.7 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.

12 NOTIFICATION AND DEBRIEFING

- (1) Any time after the Shortlisted Proponent has been identified, the Sponsors will formally notify all Proponents who were not successful in the RFP Process that they have not been selected, and will notify the Second Ranked DPA Phase Proponent that it is the second highest ranked Proponent, and will notify the Third Ranked DPA Phase Proponent that it is the third highest ranked Proponent. Notwithstanding such notification, but subject to a Proponent's right to withdraw its RFP Proposal, the Proponent's RFP Proposal will remain valid and in effect until the earlier of (a) the expiration of the RFP Proposal Validity Period (or extended RFP Proposal Validity Period, if applicable), or (b) the PA Effective Date, in accordance with RFP Section 6.4.
- (2) Any time after PA Effective Date, the Sponsors, and a member or members of the Evaluation Committee will meet with any unsuccessful Proponents, at the request of the unsuccessful Proponent, to provide a de-briefing.

13 DEFINITIONS

13.1 General

- (1) Unless otherwise defined in this RFP Section 13, capitalized terms and expressions used in this RFP have the meanings given to them in the Draft Development Phase Agreement (including through incorporation by reference of certain provisions from the Draft Project Agreement).
- (2) In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

- (3) 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.
- (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) All references in this RFP to “day” or “days” means calendar days, unless otherwise stated.

13.2 RFP Definitions

Whenever used in the RFP:

- (1) “Acquiree” is defined in RFP Section 3.6(10);
- (2) “Acquirer” is defined in RFP Section 3.6(10);
- (3) “Ad Hoc Meeting” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (4) “Addendum” means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7;
- (5) “Advisor” 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;
- (6) “Affiliate” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (7) “Assignment of Project Documents” means the assignment agreement entered into on or before DPA Close between Dev Co and Contracting Authority in the form attached to Schedule 11 – Form of Assignment of Project Documents to this RFP;
- (8) “Background Information” means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (9) “Break Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting an RFP Proposal in the event that the RFP Process is cancelled, as determined by the Sponsors in accordance with RFP Section 11.4.3.
- (10) “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;
- (11) “Capital Cost Estimates Critique” means the critique to be provided by a Proponent pursuant to Section 1.7 of Part B of Part 1 of Schedule 3 of this RFP.
- (12) “Client” means the client or clients listed in the RFP Data Sheet in respect of RFP Section 1.1(1);
- (13) “Collaborative and Behavioural Assessment” is defined in RFP Section 3.13(1).

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- (14) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);
- (15) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);
- (16) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (17) “Conflict of Interest” is defined in RFP Section 3.9.1(7);
- (18) “Construction Prime Team Member” is defined in the RFQ;
- (19) “Consultation Session” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (20) “Contact Person” is defined in RFP Section 3.2.1;
- (21) “Contracting Authority Basis of the Works Schedule Report” means the report entitled “Basis of the Works Schedule.pdf” in the Data Room.
- (22) “Contracting Authority Estimates” means the estimates entitled “Project Estimate – Rev C.pdf” in the Data Room.
- (23) “Contracting Authority Schedules” means the schedules entitled “Project Schedule – Rev 0.pdf” and “Project Schedule – Rev 0.xer” in the Data Room.
- (24) “Contracting Authority Work Breakdown Structure” means the template entitled “Project WBS – Draft.pdf” in the Data Room.
- (25) “Contractor” is the Successful Proponent that has executed the Project Agreement with the Signing Parties;
- (26) “COR Certification” has the meaning given in the Draft Development Phase Agreement;
- (27) “COR-Certified Construction Dev Co Party” has the meaning given in the Draft Development Phase Agreement;
- (28) “COR-Qualified Construction Dev Co Party” has the meaning given in the Draft Development Phase Agreement;
- (29) “Data Room” is defined in RFP Section 2.4(1);
- (30) “Design and Construction Schedule Critique” means the critique to be provided by a Proponent pursuant to Section 1.8 of Part B of Part 1 of Schedule 3 of this RFP.
- (31) “Dev Co” is the Shortlisted Proponent if the Shortlisted Proponent has executed the Development Phase Agreement with the Signing Parties;
- (32) “Development Phase Agreement” means the development phase agreement entered into by the Signing Parties and the Shortlisted Proponent (as Dev Co) on DPA Close;

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- (33) “Development Phase Agreement Commercial Issues CCM” is defined in Schedule 2 to this RFP;
- (34) “DPA Close” means the date the Development Phase Agreement is executed by the Shortlisted Proponent (as Dev Co) and the Signing Parties;
- (35) “DPA Close Target Date” means the date set out as the DPA Close Target Date in the Timetable;
- (36) “DPA Completion Documents” means, collectively, the documents and deliverables set out in Schedule 12 – DPA Completion Documents to this RFP;
- (37) “DPA Phase” is defined in RFP Section 1.3(1)(b)(ii);
- (38) “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;
- (39) “Draft Design Agreements Submission” is defined in RFP Section 4.1(2);
- (40) “Draft Design Agreements Submission Deadline” is defined in RFP Section 3.1(1);
- (41) “Draft Dev Co Structure” means a description of the Proponent’s legal corporate structure, organizational structure and subcontracting structure;
- (42) “Draft Dev Co Structure Submission” is defined in RFP Section 4.2(3);
- (43) “Draft Dev Co Structure Submission Deadline” is defined in RFP Section 3.1(1);
- (44) “Draft Assignment of Project Documents” means the draft of the assignment agreement attached as Schedule 11 – Form of Assignment of Project Documents to this RFP, as may be revised in accordance with this RFP;
- (45) “Draft Development Phase Agreement” means the draft of the development phase agreement attached as Schedule 10 – Form of Development Phase Agreement to this RFP and as more generally described the RFP Data Sheet, as may be revised in accordance with this RFP;
- (46) “Electronic Submission and Evaluation System” means the electronic tendering software named AWARD® by Commerce Decisions®;
- (47) “Evaluation Committee” is defined in RFP Section 7.1(1);
- (48) “Fairness Monitor” is defined in the RFP Data Sheet in respect of RFP Section 1.5;
- (49) “Final RFP Proposal Score” is defined in RFP Section 7.5.8(3);
- (50) “FIPPA” is defined in RFP Section 3.8.1(1)(a);
- (51) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);

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- (52) “Government of Ontario” means Her Majesty the Queen in Right of the Province of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;
- (53) “Identified Proponent Parties” is defined in RFP Section 3.6(1);
- (54) “IHSA” has the meaning given in the Draft Development Phase Agreement.
- (55) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (56) “Ineligible Person’s Affiliate” is defined in RFP Section 3.9.2(1);
- (57) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (58) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (59) “IO” is defined in RFP Section 1.1(1);
- (60) “IOCIP” is defined in RFP Section 3.11.3(1);
- (61) “IOCIP Broker of Record” means Aon Reed Stenhouse Inc.;
- (62) “ISO 45001 Accreditation” has the meaning given in the Draft Development Phase Agreement;
- (63) “Key Individual” means those individuals identified in the Proponent’s Prequalification Submission as key individuals (if applicable);
- (64) “Key Issues” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (65) “Legal/Commercial CCMs” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (66) “Material Deviation” is defined in RFP Section 7.3(1);
- (67) “MFIPPA” is defined in RFP Section 3.8.1(1)(b);
- (68) “MOI” is defined in RFP Section 1.1(7);
- (69) “MTO” or “Ministry of Transportation” means the Her Majesty the Queen in right of Ontario as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority;
- (70) “OILC” is defined in RFP Section 1.1(1);
- (71) “PA Effective Date” means the date the Project Agreement is signed by the Successful Proponent and the Signing Parties;
- (72) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);

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- (73) “Prequalification Submission” is defined in RFP Section 1.2(1);
- (74) “Prequalified Parties” is defined in RFP Section 1.2(1);
- (75) “Probability-Impact Matrix” means the probability-impact matrix entitled "Subway Project Probability-Impact Matrix" in the Data Room.
- (76) “Prohibited Act” means:
- (a) 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:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to a Proponent becoming a Shortlisted Proponent, the Successful Proponent, the Second Ranked DPA Phase Proponent or the Third Ranked DPA Phase Proponent; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to a Proponent’s RFP Proposal or Project 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;
 - (b) 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 RFP Section 13.2(75);
 - (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this RFP Process, including in relation to the Development Phase Agreement; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;
- (77) “Prohibited Contacts” is defined in RFP Section 3.3.2(2);
- (78) “Project” is defined in RFP Section 1.1(2);

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- (79) “Proponent Consultation Process” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (80) “Proponent Interviews” is defined in RFP Section 3.12(1);
- (81) “Proponent Representative” is defined in RFP Section 1.2(2);
- (82) “Proponent Team Members” means all members of the Proponent team that were identified in the RFQ process and were prequalified as a Proponent team to submit an RFP Proposal in this RFP Process;
- (83) “Proponents” is defined in RFP Section 1.1(2);
- (84) “Proponents’ Meeting” is defined in RFP Section 3.4.1(1);
- (85) “Proposed Change in Identified Proponent Party” is defined in RFP Section 3.6(4);
- (86) “Reference Concept Design Report” means, collectively, the documents located in the Data Room at the following location “01 - Design Info/01 RCD/02_Final”.
- (87) “Reserve Prequalified Party” has the meaning provided in the RFQ;
- (88) “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:
- (a) 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;
 - (b) 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;
 - (c) (i) 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 (ii) 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 (i) being issued (as determined by the Sponsors in their sole discretion);
 - (d) in the case of an individual, he or she (or in the case of a legal entity, any members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;

- (e) 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;
 - (f) 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 to materially affect the ability of the Proponent to perform its obligations under (i) the Draft Development Phase Agreement, if it were to become the Shortlisted Proponent or the Successful Proponent under the RFP Process, or (ii) following DPA Close with respect to the Shortlisted Proponent and the Successful Proponent, the Development Phase Agreement; or
 - (g) has a material interest in the production of tobacco products;
- (89) “RFIs” is defined in RFP Section 3.2.2(1);
- (90) “RFP” is defined in RFP Section 1.1(1);
- (91) “RFP Data Sheet” means Schedule 1 – RFP Data Sheet to this RFP;
- (92) “RFP Documents” is defined in RFP Section 2.1(1);
- (93) “RFP Phase” is defined in RFP Section 1.3(1)(b)(i);
- (94) “RFP Process” is defined in RFP Section 1.1(4);
- (95) “RFP Proposal Commercial Submission” is defined in RFP Section 5.1(2)(c);
- (96) “RFP Proposal Commercial Submission Information” means the information contained in the Proponent’s Commercial Submission;
- (97) “RFP Proposal Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting an RFP Proposal, as determined by the Sponsors in accordance with RFP Section 11.4.2;
- (98) “RFP Proposal Information” is defined in RFP Section 3.8.4(5);
- (99) “RFP Proposal Information Licence” is defined in RFP Section 3.8.4(4);
- (100) “RFP Proposal Submission Deadline” has the meaning given in RFP Section 3.1(1);
- (101) “RFP Proposal Submission Documents” means the documents submitted pursuant to RFP Section 5.1(2)(a);
- (102) “RFP Proposal Submission Form” means the submission form submitted by a Proponent as part of its RFP Proposal in the form attached to Schedule 4 – RFP Proposal Submission Form to this RFP;

- (103) “RFP Proposal Technical Submission” is defined in RFP Section 5.1(2)(b);
- (104) “RFP Proposal Technical Submission Information” means the information contained in the RFP Proposal Technical Submission;
- (105) “RFP Proposal Validity Period” is defined in RFP Section 6.4(1);
- (106) “RFP Proposals” is defined in RFP Section 1.1(2);
- (107) “RFQ” is defined in RFP Section 1.2(1);
- (108) “Scheduled Visits” is defined in RFP Section 3.5.1(1);
- (109) “Second Ranked DPA Phase Proponent” is defined in RFP Section 9.1(2);
- (110) “Shortlisted Proponent” is defined in RFP Section 1.1(3)(b);
- (111) “Signing Parties” is defined in RFP Section 1.1(8);
- (112) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (113) “Sponsors’ Executive Ad Hoc Meeting” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (114) “Submission Requirements” means all of the submission requirements set out in this RFP;
- (115) “Successful Proponent” is defined in RFP Section 1.1(3)(c);
- (116) “Surety’s Consent” is defined in RFP Section 5.2.1(1);
- (117) “Third Ranked DPA Phase Proponent” is defined in RFP Section 9.1(2).
- (118) “Timetable” is defined in RFP Section 3.1(1);
- (119) “Topic Meetings” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (120) “White Paper” is defined in Section 3.2.3(1) of Schedule 1 – RFP Data Sheet to this RFP;
- (121) “WSIB” has the meaning given in the Draft Development Phase Agreement.