

contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from such Preferred Proponent and the Proponent Team Members of the Preferred Proponent to that effect.

(7) The Sponsors reserve the right to request and/or approve a change in the financing plan or debt strategy of the Preferred Proponent (for example, fixed or variable rate, the use of synthetics, bank debt or capital market debt) following identification of the Preferred Proponent under RFP Section 8.1 and prior to Financial Close.

5.6 Extension of Proposal Validity Period

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

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

(2) In respect of the Preferred Proponent, the Sponsors shall be considered to have accepted the Preferred Proponent's Proposal, including its Financial Submission and its revised Credit Spreads pursuant to RFP Section 5.5 prior to the expiration of the Proposal Validity Period if the Signing Parties and the Preferred Proponent reach Commercial Close prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable). For greater clarity, the Preferred Proponent shall maintain its prices as set out in its Price Submission Form (as submitted on the Submission Deadline or, if applicable, as amended pursuant to RFP Section 5.5 or during any negotiations process pursuant to RFP Section 5.5(5) or RFP Section 8.1) from Commercial Close until Financial Close, subject only to certain allowable adjustments to the Benchmark Rate(s) on Financial Close as described in Part 2 of Schedule 3 of this RFP.

(3) Notwithstanding RFP Section 5.6(1), if, during the course of negotiations between a Negotiations Proponent and the Sponsors, the Negotiations Proponent resubmits prices to the Sponsors or agrees to revised terms and conditions of the Project Agreement or the Negotiations

Proponent's Proposal prior to the expiration of the Proposal Validity Period, that Negotiations Proponent is deemed to have agreed to an extension of the Proposal Validity Period for the Negotiations Proponent's amended Proposal for a period of ninety-five (95) days after the date of the Proponent's submission to the Sponsors of the revised prices or revised terms and conditions, as applicable. For clarity, notwithstanding the submission by a Negotiations Proponent or Preferred Proponent of an amended Proposal in accordance with this RFP Section 5.6(3), the Proponent's original Proposal, as amended by the application or by RFP Section 5.5, as applicable, continues to exist in accordance with the original Proposal Validity Period.

(4) Notwithstanding RFP Sections 5.5 or 5.6(1), (2) or (3), the adjustments on Financial Close that are set out in Schedule 3, Part 2 to this RFP shall remain applicable.

5.7 Lender Requirements

(1) At any time in the RFP Process, Proponents shall not enter into exclusivity arrangements with any Lenders, including prospective Lenders. The Proponent or the Proponent's financial advisor will be required to confirm in its letter to be delivered under Section 1.2 of Section E of Part 2 of Schedule 3 of this RFP that the Lenders have not entered into any exclusivity arrangement with the Proponent with respect to the Project. Notwithstanding any other provision of this RFP, but subject to the following proviso, the Lenders may act in the capacity of Lenders for more than one Proponent under this RFP Process provided the Lenders have agreed with each Proponent:

- (a) to establish industry standard confidentiality and conflict of interest screens to ensure that each Proponent is represented by a discrete team of Lender personnel;
- (b) to prohibit any communication regarding this RFP Process between members of different teams of Lender personnel;
- (c) to physically separate all documentation under the control of each team of Lender personnel;
- (d) to keep all computer based information and data discrete and control access to prohibit persons other than on a team of Lender personnel to have access to that Proponent team's information; and
- (e) that any breaches of such confidentiality requirements are appropriately sanctioned including possible dismissal.

(2) Lenders participating in a Proposal ("Participating Lenders") shall not be Affiliates of any of the Proponent Team Members participating in that Proposal ("Participating Proponent Team Members") (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender) and shall act at all times at arm's length to every other Participating Proponent Team Member (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender).

SECTION 6 – EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

6.1 Evaluation Committee and Advisors

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

(2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments 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.

6.2 Sponsors' Clarification and Verification of Proposals

(1) The Sponsors may:

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

(2) The Sponsors are not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a Proponent, including an ambiguity in a Proposal or in a statement made by a Proponent.

(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 Proposal.

6.3 Steps in the Evaluation Process

6.3.1 Step 1 – Compliance of Proposals

(1) Subject to RFP Section 6.3.1(8), in Step 1, the Sponsors will open each Proposal and will review the contents of the Proposal to assess whether it is in compliance with the terms and conditions of the RFP Documents, including whether all documents required to be submitted have been appropriately submitted.

(2) If, in the sole discretion of the Sponsors, a Proposal does not comply with the requirements set out in the RFP Documents, the Sponsors may, in their sole discretion, without liability, cost or penalty, eliminate the Proposal and the Proposal shall not be given any further consideration.

(3) For purposes of this RFP, "comply" and "compliance" mean that the Proposal conforms to the requirements of the RFP Documents without material deviation. A "material deviation" in a Proposal is any failure to comply with an RFP Document requirement that, in the sole discretion of the Sponsors:

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

(4) A requirement in this RFP or in the Schedules to this RFP that a Proponent "must" or "shall" do anything is not intended to supersede this RFP Section 6.3.1 or, for greater clarity, to supersede the concepts of "comply", "compliance" or "material deviation" set out in this RFP Section 6.3.1.

(5) A Proponent's submission of a complete but poor quality Proposal shall not be considered a failure to comply but may affect the Proponent's evaluated score.

(6) If, during Step 1 of the evaluation process or at any time during the RFP Process, the Sponsors determine that a Proposal is non-compliant pursuant to this RFP Section 6.3.1, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare the Proposal to be non-compliant and the Proposal shall not be given any further consideration.

(7) For the purpose of clarity, 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 failures to comply that, in the Sponsors' sole discretion,

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do not constitute a material deviation in accordance with this RFP Section 6.3.1. For clarity, the Sponsors may also waive a material deviation under RFP Section 10.2(3).

(8) In the event that the Sponsors have identified possible Triggering Event(s) for a Major Project Re-scoping in accordance with Part 3 of Schedule 3 to this RFP, the Sponsors shall not open any Technical Adjustment Envelope or Price Adjustment Envelope unless,

- (a) the Triggering Event that applies to such Technical Adjustment Envelope or Price Adjustment Envelope has occurred; and
- (b) the Sponsors have determined that they wish to undertake the applicable Major Re-scoping,

all in accordance with Part 3 of Schedule 3 to this RFP.

(9) In the event that the Sponsors open Technical Adjustment Envelope(s) and/or Price Adjustment Envelope(s) in accordance with RFP Section **Error! Reference source not found.**(8), the Sponsors will review the applicable Re-scoping Technical Adjustment(s) and/or Re-Scoping Price Adjustment(s) to assess whether they are in compliance with the terms and conditions of the RFP documents. Such assessment shall be in accordance with this RFP Section **Error! Reference source not found.**

6.3.2 Step 2 – Review of the Proposal Submission Form

- (1) In Step 2, the Sponsors shall review the Proposal Submission Form to:
 - (a) ensure that the form has been properly completed and signed;
 - (b) 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
 - (c) assess the Conflict of Interest and Confidential Information section of the Proposal Submission Form.

6.3.3 Step 3 – Review of the Acceptability of Innovation Submissions

- (1) The Innovation Submissions will be reviewed for their acceptability by the Sponsors.

6.3.4 Step 4 – Review and Scoring of the Technical Submissions and Accepted Innovation Submissions

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(1) The Technical Submissions and any accepted Innovation Submissions will be evaluated and scored in accordance with Schedules 3, 5 and 6 to this RFP.

6.3.5 Step 5– Review of the Financing Plan, Financial Model, Financing Letter, Innovation Submissions

(1) The Financial Submission, and any accepted Innovation Submissions (Financial) as revised by RFP Section 5.5(2), as applicable, will be evaluated and scored in accordance with Parts 2, 3 and 4 of Schedule 3 to this RFP to assess which Financial Submission, accepted Innovation Submissions (Financial) present the best value for the Sponsors.

6.3.6 Step 6 – Establishing a Final Proposal Score

(1) For the purpose of the evaluation process, the weightings and scoring set out in Schedule 3, Part 4 to this RFP will apply.

(2) Subject to RFP Section 6.3.6(3), the score established based on RFP Section 6.3.6(1) shall be the "Final Proposal Score".

(3) If the Sponsors receive approval to proceed with an Innovation Submission, the Final Proposal Score will be amended to reflect the inclusion of such Innovation Submission.

(4) If a Proponent fails to achieve any of the minimum scores or fails to have in place the approval(s) required for its Proposal to have committed financing as set out in the applicable provisions of Part B (Proposal Evaluation) of Part 4 of Schedule 3 to this RFP, then, as part of Step 6 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 Proposal will continue to be considered in the RFP Process and whether such failure will prevent the Proponent from becoming the Preferred Proponent.

6.3.7 Step 7 – Ranking the Proponents

(1) In Step 7, the Evaluation Committee shall rank only those Proponents that have met all requirements in Steps 1 through 6 and shall base the ranking on the Final Proposal Score.

(2) In the event of a tie in the Final Proposal Score between two Proponents the Sponsors may, in their sole discretion, give the higher ranking to the Proponent proposing the lower NPV calculation, total nominal project cost and a schedule of Annual OM&R Payments in its Proposal.

(3) If the highest ranked Proponent based on the Final Proposal Score, has submitted a [price] in its Financial Submission that exceeds the Pre-Established Project Budget, the Sponsor(s) may, in their sole discretion, identify the Proponent that has,

(a) the next highest Final Proposal Score; and

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- (b) has submitted a **[price]** in its Financial Submission that is equal to or less than the Pre-Established Project Budget,

as the highest ranked Proponent. Thereafter and for the purpose of identifying a Second Negotiations Proponent, if any, pursuant to RFP Section 8.1, the Sponsors shall not consider any remaining Proponent that has submitted a Financial Submission **[price]** that exceeds the Pre-Established Project Budget. For clarity, the Sponsor(s) may, in their sole discretion, decline to exercise the right set out in this RFP Section **Error! Reference source not found.**(3) in the event that the Sponsor(s);

- (c) elect to carry out a re-scoping exercise in accordance with Part 3 of Schedule 3 to this RFP; or
- (d) elect to pursue, and receive, an increase to the Pre-Established Project Budget.

6.3.8 Step 8 – Major Project Re-scoping

(1) In the event the Sponsors elect to carry out a Major Project Re-scoping in accordance with Part 3 of Schedule 3 to the RFP, the Evaluation Committee shall,

- (a) carry out the evaluation and scoring of the Re-scoping Technical Adjustment(s) and/or Re-scoping Price Adjustment(s) in accordance with Part 3 of Schedule 3 to the RFP and revise the Proponents' Final Proposal Scores accordingly; and
- (b) re-rank the Proponents based on the Proponents' revised Final Proposal Scores and the procedure set out in Part 3 of Schedule 3 to the RFP.

SECTION 7 – GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 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 a Proposal is compliant with the RFP Documents;
 - (c) whether a failure to comply constitutes a material deviation;
 - (d) whether any proposed Innovation Submissions will or will not be accepted by the Sponsors;
 - (e) the Final Proposal Score of a Proposal;

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- (f) the rankings of the Proposals;
- (g) whether the Sponsors elect to carry out a Major Project Re-scoping; and
- (h) whether a 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, scores, ranking and disqualification of the Proponents and their Proposal 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 Proposals or in the exercise of any of the Sponsors' rights under this RFP:

- (a) any instances of poor performance by a Proponent or a Proponent Team Member that the Sponsors have experienced; and/or
- (b) any publicly available information about a Proponent or a Proponent Team Member that is, in the Sponsors' sole discretion, credible information.

7.1.2 Disqualification

(1) The Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member or a Proposal or reverse their decision to make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to Commercial Close with respect to the Preferred Proponent and at any time prior to Financial Close with respect to the remaining Proponents, if,

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3.1;
- (b) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its Proposal or interview;
- (c) the Proponent contravenes RFP Sections 3.3.2 or 3.3.3;
- (d) the Proponent fails to comply with Applicable Law;
- (e) the Proposal contains false or misleading information or a misrepresentation;
- (f) the 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);
- (g) if, in the opinion of the Sponsors, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section 3.3.4;
- (h) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (i) the Proponent or any Proponent Team Member has been convicted of an offence in connection with, any services rendered to the Sponsors or any Ministry, agency, Board or Commission of the Government of Ontario; or
- (j) 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.

SECTION 8 – COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED PROPONENT

8.1 Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponents

- (1) Subject to RFP Section 6.3.7(3) and based on the Final Proposal Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the Proposal Validity Period:
- (a) identify the highest ranked Proponent as the Preferred Proponent and accept the Proponent's Proposal as submitted, including or excluding its Innovation Submissions;
 - (b) identify the two highest ranking Proponents as the First Negotiations Proponent (highest ranked) and the Second Negotiations Proponent (second highest ranked) (the "**Negotiations Proponents**") and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the Sponsors conclude successful negotiations as the Preferred Proponent; or

- (c) enter into separate and distinct but contemporaneous negotiations with the First and Second Negotiations Proponents and identify a Preferred Proponent as a result of those negotiations.

(2) Subject to the requirements set out in Part 3 of Schedule 3 to the RFP in respect of Major Re-scoping, the Sponsors may use the negotiations process to negotiate any aspect of a Negotiations Proponent's Proposal (including any Innovation Submission) or the Project Agreement, or both, including, for greater clarity, any amendments to the Project Agreement that are reasonably required to:

- (a) accommodate a Negotiations Proponents' financing arrangements; or
- (b) revise the scope of the Project in the event that all Proposal prices have exceeded the Sponsors' Project budget.

For clarity, nothing in RFP Section 8.1(2) prohibits the Sponsors from carrying out Routine Re-scoping or negotiations related to Routine Re-scoping.

(3) Except as provided in RFP Section 5.6(3), notwithstanding any negotiations between the Sponsors and a Negotiations Proponent, the Proposals of all Proponents shall remain valid and irrevocable until the expiration of the Proposal Validity Period or until Financial Close, in accordance with RFP Section 5.4(1).

(4) If, in accordance with RFP Sections 8.1(1)(b) or (c) the Proponent and the Sponsors negotiate revisions to the Project Agreement, the Sponsors and the Preferred Proponent shall develop a revised Project Agreement and, for the purposes of RFP Section 9, the revised Project Agreement shall be the "**Project Agreement**".

(5) The Sponsors may, in their sole discretion and for greater clarity, elect to change the selection of which of the RFP Section 8.1(1) negotiations processes to employ at any time during the application of RFP Section 8.

(6) In the event that the Sponsors have elected in accordance with Part 3 of Schedule 3 to this RFP to carry out a Category 2 Major Re-scoping only, within **[10 Business Days]** of a Proponent being identified as a Negotiations Proponent in accordance with RFP Section **Error! Reference source not found.**, such Proponent shall, in a new Technical Submission, submit all of the technical information, if any, that would be required to implement the applicable Re-scope Components (a "**Category 2 Major Re-scoping Technical Submission**"). The Sponsors will review the Category 2 Major Re-scoping Technical Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents. Such assessment shall be in accordance with RFP Section **Error! Reference source not found.** For clarity and without limiting any other right of the Sponsors under this RFP, (a) the Sponsors may use the negotiations process set out in this RFP Section **Error! Reference source not found.** to negotiate any aspect of the Re-scoping Technical Submission to ensure that the Category 2 Major Re-scoping Technical Submission is in compliance with the terms and conditions of the RFP Documents; and (b) any issues respecting the compliance the Category 2 Major Re-scoping

Technical Submission that arise must be resolved to the satisfaction of the Sponsors, in their sole discretion, before the Sponsors may identify a Preferred Proponent in accordance with RFP Section **Error! Reference source not found.** or RFP Section **Error! Reference source not found.**

(7) In the event that the Sponsors have elected in accordance with Part 3 of Schedule 3 to this RFP to carry out a Category 1 Major Re-scoping or a Category 2 Major Re-scoping, promptly following the identification of a Proponent as a Negotiations Proponent, such Proponent shall submit a Financial Model audit letter in accordance with the requirements of Part 2 of Schedule 3 to this RFP in respect of the Amended Financial Model identified by the Sponsors.

SECTION 9 – PREFERRED PROPONENT

9.1 Identification of the Preferred Proponent and the Letter of Credit

(1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify a Preferred Proponent in accordance with RFP Section 8.1 or RFP Section 5.5(5).

(2) No later than three (3) Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, the Preferred Proponent shall provide an irrevocable standby letter of credit (the "**Letter of Credit**") in the amount specified in the RFP Data Sheet and in the form attached as Schedule 8 to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5). The Preferred Proponent may, with the prior written consent of the Sponsors, which consent may be withheld in the sole discretion of the Sponsors, provide multiple irrevocable standby letters of credit from Proponent Team Members as approved and confirmed by the Sponsors (each a "**Letter of Credit Provider**") totalling the amount specified in the RFP Data Sheet and in the form attached as Schedule 8 to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5).

(3) If the Preferred Proponent does not provide the Letter(s) of Credit to the Sponsors as required by this RFP Section 9.1 the Sponsors may, in their sole discretion, by written notice to the Preferred Proponent, cease all discussions with the Preferred Proponent, terminate any obligations of the Sponsors to the Preferred Proponent under any agreement or understanding relating to the Project, and, for greater certainty, the Preferred Proponent will not be entitled to or receive any payment or compensation of any kind relating to the Project.

(4) Subject to the Sponsors' right to retain and apply the Letter(s) of Credit as liquidated damages as provided in this RFP or in the Project Agreement, the Letter(s) of Credit shall be returned to the Preferred Proponent as follows:

- (a) if the Sponsors give notice to the Preferred Proponent that they are cancelling or discontinuing the RFP Process, no later than ten (10) days after receipt by the Sponsors of a written demand for the Letter of Credit by the Preferred Proponent; or
- (b) unless the Sponsors and the Preferred Proponent agree that the Letter of Credit shall be amended and delivered to Infrastructure Ontario in satisfaction of Project Co's obligations in accordance with the Project Agreement, upon Commercial Close.

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(5) The Sponsors shall be entitled to draw on the Letter(s) of Credit and retain and apply the proceeds thereof as liquidated damages if,

- (a) there is a breach of the Preferred Proponent obligations set out in RFP Section 9.2 by the Preferred Proponent;
- (b) a Termination Notice has been given to the Preferred Proponent under RFP Section 5.5(6)(b);
- (c) Commercial Close has not occurred (for reasons other than the failure of the Signing Parties to execute the Project Agreement in accordance with its terms),
 - (i) on or before the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed and the Sponsors have given their consent, on or before the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable); or
- (d) the Preferred Proponent has notified the Sponsors in writing that it wishes to cease all discussions with the Sponsors relating to the Project.

(6) The Sponsors shall not be required to give any prior written notice to the Preferred Proponent of their intention to draw on the Letter(s) of Credit. If the Preferred Proponent notifies the Contact Person in writing that the Preferred Proponent disputes the Sponsors' right to draw on the Letter(s) of Credit and to retain the proceeds as liquidated damages, then the Sponsors shall nonetheless be entitled to draw on the Letter(s) of Credit, but will remain liable to repay all or a portion of the amount drawn, together with interest charges at the rate prescribed on that amount, until such dispute has been finally resolved. If the Preferred Proponent fails to renew or extend the Letter(s) of Credit at least thirty (30) days prior to its expiry date, the Sponsors may, at any time without notice to the Preferred Proponent, draw on the Letter(s) of Credit and hold the proceeds thereof in the same manner and for the same purposes as the Letter(s) of Credit.

(7) If the Preferred Proponent delivers multiple Letters of Credit from multiple Letter of Credit Providers in accordance with RFP Section 9.1(2), the Preferred Proponent acknowledges and agrees that:

- (a) the Sponsors may draw upon any Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
- (b) the Sponsors may draw on any Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;
- (c) the Sponsors may draw upon any Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Proponent Team Member;
- (d) the provision of multiple letters of credit shall not in any way prejudice or adversely affect the rights of the Sponsors to draw on any Letter of Credit in accordance with this RFP, including in the event that Sponsors are entitled to draw on the Letter of Credit in accordance with RFP Section 9.1(5) and such circumstance is not the result

of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

9.2 Preferred Proponent Obligations

- (1) The Preferred Proponent shall,
 - (a) achieve Commercial Close,
 - (i) prior to the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed unless the Sponsors have given their consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable)
 - based on the Project Agreement in substantially the same form and content as finalized prior to the Submission Deadline or on the Project Agreement as revised and agreed to by the Proponent and the Sponsors;
 - (b) execute the Project Agreement, subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require:
 - (A) the insertion or addition of information relating to the Preferred Proponent's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement;
 - (B) the insertion or addition of information or the modification of provisions of the Project Agreement required in order to reflect accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or
 - (C) the revision of provisions in the Project Agreement to more accurately reflect the result of negotiations in accordance with RFP Section 8.1;
 - (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Project Agreement (where contemplated in or required under the terms of the RFP

Documents) or to complete any Schedules to the Project Agreement;
and

- (iv) changes, additions and modifications to those parts of the Project Agreement which are indicated in the Project Agreement as being subject to completion or finalization,

provided, that, in each case the changes, additions or modifications identified in RFP Section 9.2(1)(b) are consistent with the principles set out in the Project Agreement and otherwise acceptable to the Sponsors, acting reasonably; and

- (c) maintain its prices in accordance with the terms and conditions of this RFP, subject only to (i) revisions to the Credit Spreads, if any, in accordance with, as applicable, RFP Section 5.5(5), or (ii) revisions to the price explicitly agreed to by the Sponsors.

(2) The Preferred Proponent shall not later than five (5) days after receipt of notice from the Sponsors that it is the Preferred Proponent, deliver to the Contact Person a timetable setting out its schedule for achieving the following Financial Close milestone dates:

- (a) commencement and completion of financing documentation;
- (b) receipt of final ratings from rating agencies (if applicable); and
- (c) final pricing of the financing,

for review and approval by the Sponsors, acting reasonably (the "**Financing Timetable**"). The Sponsors may elect, in their sole discretion, to extend one or more of the dates identified in the Financing Timetable.

(3) The Preferred Proponent shall provide access and shall promptly make available to the Sponsors and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsors from time to time in connection with the Sponsors' due diligence investigations including, without limitation, copies of any written representations, statements, assurances, commitments or agreements which the Preferred Proponent, any Preferred Proponent Team Member or any of their respective Advisors have received from any municipality, governmental authority or utility relating to the Project. The Preferred Proponent shall provide to the Sponsors, in a timely fashion, final draft versions of all documents required to be delivered by the Preferred Proponent in accordance with the Project Agreement, together with such other documentation as the Sponsors may reasonably request from time to time.

9.3 The Sponsors Authorization and Approvals

(1) The Preferred Proponent acknowledges and agrees that the entering into of the Project Agreement by the Signing Party or Parties is conditional on and subject to the Signing Party or

Parties obtaining any necessary authorizations and approvals required in connection with the Project, including, for certainty, the approval of any relevant government authority.

SECTION 10 – GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT

10.1 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion:
 - (a) reject any or all of the Proposals;
 - (b) reject an Innovation Submission in any Proposal;
 - (c) accept any Proposal;
 - (d) if only one Proposal is received, elect to accept or reject it;
 - (e) elect to discontinue the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before Commercial Close;
 - (f) alter the Timetable, the RFP Process or any other aspect of this RFP, which for greater certainty, includes the right to schedule Financial Close on the day after Commercial Close; 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.

(2) 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 Schedule 5A to this RFP. 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 Proposal, that any Proponent Team Member of any Proponent resubmit a certificate of an officer from such Proponent Team Member in the form attached as Schedule 5A 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) If a financial institution put forward as a Proponent Team Member and acting in a financial advisory capacity is not an Affiliate of any of the Proponent Team Members of the Proponent (“**Exempt Financial Institution**”), then RFP Sections 10.1(3) and 10.1(3) shall not apply to any such Exempt Financial Institution.

(5) Further to RFP Sections 10.1(3) and 10.1(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 10.1(3) or 10.1(3); or
- (b) complies with Sponsors’ requirement as prescribed in accordance with RFP Section 10.1(3) or 10.1(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 a 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.

10.2 Special Circumstances

(1) If the Sponsors determine that all of the Proposals submitted are non-compliant in accordance with RFP Section 6.3.1, the Sponsors may, in their sole discretion:

- (a) take any action in accordance with RFP Section 10.1;
- (b) carry out a process whereby all Proponents are directed to correct the material deviations in their Proposals for re-submission, without a change in their Commercial and Financial Sections; or
- (c) enter into negotiations with any one of the Proponents to attempt to finalize an agreement.

(2) If the Sponsors receive,

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

the Sponsors may, in their sole discretion:

- (c) take any action in accordance with RFP Section 10.1(1); or
- (d) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a compliant Proposal.

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

10.3 Sponsors' Liability for Proponent's Costs

10.3.1 General

(1) Except as provided in RFP Sections 10.3.2 and 10.3.3, 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 10.1 or 10.2.

10.3.2 Design and Bid Fee

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

- (a) a Proponent must submit a full and proper Proposal for that Proponent to be eligible for the Design and Bid Fee, provided that the Sponsors shall determine whether a Proposal is full and proper based on factors that include whether the Proposal is compliant with this RFP (as determined in accordance with RFP Section 6.3.1) and whether the Proposal received a Final Proposal Score with respect to its Technical Submission of at least 50%;
- (b) a Proponent must not withdraw from this RFP Process after the Submission Deadline in contravention of this RFP;
- (c) if Infrastructure Ontario draws upon a Proponent's Letter(s) of Credit in accordance with this RFP or the Proponent's Standby Letter of Credit in accordance with the Project Agreement, then such Proponent will not be eligible for the Design and Bid Fee;
- (d) Financial Close must be achieved with a Proponent under the Project Agreement to this RFP, provided that in the event that Financial Close is not

achieved with a Proponent under the Project Agreement because Infrastructure Ontario, as a result of a Severe Market Disruption,

- (i) exercises its rights under Section 2.4(b) of the Project Agreement (the "**Severe Market Disruption Event Date**"), and
- (ii) concludes and reaches Financial Close under a new project agreement respecting the Project within 6 months after the Severe Market Disruption Event Date,

then this condition 10.3.2(1)(d) shall be satisfied.

For greater certainty, a Proponent shall not be eligible to receive both a Design and Bid Fee and the compensation contemplated under Section 2.4(c) of the Project Agreement.

(2) The amount of the Design and Bid Fee that will be paid to each eligible Proponent in accordance with RFP Section 10.3.2(1) is set out in the RFP Data Sheet. Any additional requirements for Proponents to take into consideration in relation to the Design and Bid Fee are set out in the RFP Data Sheet.

(3) Payment of a Design and Bid 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 Design and Bid 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.

10.3.3 Break Fee

(1) Subject to the Sponsors having obtained all necessary approvals, including approval from the Minister of Finance, if the Sponsors offer a Break Fee for this Project as set out in the RFP Data Sheet, such Break Fee plus any applicable HST, shall be paid in accordance with the following:

- (a) if the Project is cancelled prior to submission of Proposals:
 - (i) only a Proponent who has demonstrated, to the Sponsors' satisfaction, active participation in the RFP Process will be eligible to receive a Break Fee; and
 - (ii) the Sponsors may require a Proponent to substantiate its active participation in the RFP Process in order to receive a Break Fee; and
- (b) if the Project is cancelled after submission of Proposals or a Break Fee is payable for any other reason, a Break Fee will be paid to a Proponent that has submitted a full and proper Proposal.

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The Sponsors shall determine whether a Proposal is full and proper based on factors that include whether the Proposal is compliant with this RFP (as determined in accordance with RFP Section 6.3.1) and whether the Proposal received a Final Proposal Score of at least 50%.

(2) The amount of the Break Fee payable to each eligible Proponent will depend on the point in the RFP Process that cancellation occurs, in accordance with the principles set out in the RFP Data Sheet. The base amount of the Break Fee (the "**Base Break Fee**") is set out in the RFP Data Sheet.

(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 to that effect.

(4) If the Project is cancelled or a Break Fee is payable for any other reason, a Proponent shall only be eligible to receive a Break Fee and the Proponent will not be eligible to receive a Design and Bid Fee as well. For greater certainty, a Proponent shall not be eligible to receive both a Break Fee and a Design and Bid Fee relating to the Proponent's participation in the RFP Process for this Project.

10.4 Applicable Law, Attornment and Limit on Liability

(1) This RFP shall be governed and construed in accordance with Applicable Law as defined in the Project Agreement.

(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 10.4.

(3) Except as provided in RFP Sections 10.3.2 and 10.3.3, the Proponent agrees that if the Sponsors or the Sponsors' Advisors commit a material breach of their obligations under or in connection with this RFP (that is, a material breach of the bidding contract or Contract A), the Sponsors' liability to the Proponent and the aggregate amount of damages recoverable against the Sponsors for any matter relating to or arising from that material breach, whether based upon an

action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors, shall be the lesser of,

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

10.5 Licenses, 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 Proposal or in the Project Agreement, neither acceptance of the Proposal nor execution of the Project 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.

10.6 Power of Legislative Assembly

(1) Proponents are advised that no provision of the RFP Documents (including a provision stating the intention of the Sponsors) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

SECTION 11 – NOTIFICATION AND DEBRIEFING

(1) Any time after the Preferred 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. Notwithstanding such notification, the Proponents' Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, in accordance with RFP Section 5.4.

(2) Any time after Financial Close, 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.

SECTION 12 – DEFINITIONS

12.1 General

(1) Unless otherwise defined in this RFP, Section 12, capitalized terms and expressions used in this RFP have the meaning given to them in the Project Agreement. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

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(2) 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.

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

12.2 RFP Definitions

Whenever used in the RFP:

- (1) "Acquiree" is defined in RFP Section 3.6(1A);
- (2) "Acquirer" is defined in RFP Section 3.6(1A);
- (3) "Addendum" means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7;
- (4) "Additional Visit" is defined in RFP Section 3.5.3(2);
- (5) "Adjusted OM&R" is defined in Section 6.0 of Part B of Part 2 of Schedule 3 to this RFP;
- (6) "Adjusted OM&R Payment" is defined in Part A of Schedule 20 to the Project Agreement;
- (7) "Advisors" means any person or firm retained to provide professional advice to any one of the Sponsors, a Proponent, a Proponent Team Member or a Financial Services Provider, as applicable;
- (8) "Ad Hoc Meeting" is defined in Section 17.0(a) of Schedule 2 to this RFP;
- (9) "Annual OM&R Payment Amount" is defined in Section 2.16 of Part E of Part 2 of Schedule 3 to this RFP;
- (10) "Assumption" is defined in Section 5.3.1(a) of Part B of Part 1 of Schedule 3 to the RFP;
- (11) "Background Information" means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (12) "Base Break Fee" is defined in RFP Section 10.3.3(2);
- (13) "Benchmark Rate" is defined in Section 1.0 of Part B of Part 2 of Schedule 3 to this RFP;
- (14) "Benchmarking Date" is defined in Section 1.0 of Part B of Part 2 of Schedule 3 to this RFP;

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(15) "Break Fee" means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal in the event that the RFP Process is cancelled, as determined by the Sponsors in accordance with RFP Section 10.3.3;

(16) "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.

(17) "Clearing Spread" means the financing premiums/spread in excess of the Benchmark Rate used to calculate the price at which the end investors purchase bonds, as accepted by Infrastructure Ontario;

(18) "Client" means the client or clients listed in the RFP Data Sheet in respect of RFP Section 1.1(1);

(19) "Commercial Close" means the date the Project Agreement is signed by the Preferred Proponent and the Signing Parties;

(20) "Commercial Close Target Date" means the date set out as the Commercial Close Target Date in the Timetable;

(21) "Commercially Confidential Meetings" is defined in RFP Section 3.4.2(1);

(22) "Commercially Confidential RFIs" is defined in RFP Section 3.2.2(1)(a)(ii);

(23) "Communication Plan" is defined Section 3.0 of Part B of Part 1 of Schedule 3 to this RFP;

(24) "Confidential Information" is defined in RFP Section 3.8.3(1);

(25) "Conflict of Interest" is defined in RFP Section 3.9.1(7);

(26) "Construction Management Plan" is defined in Section 6.1 of Part B of Part 1 of Schedule 3 to this RFP;

(27) "Construction Safety Plan" is defined in Section 1.4 of Part B of Part 1 of Schedule 3 to this RFP;

(28) "Consultation Plan" is defined in Section 5.2.1 of Part B of Part 1 of Schedule 3 to this RFP;

(29) "Contact Person" is defined in RFP Section 3.2.1(1);

(30) "Contract A" is defined in RFP Section 1.1(3);

(31) "Credit Spread Election Facilities" is defined in RFP Section 5.5(1)(b)(i);

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(32) "Credit Spreads" means the financing premiums/spreads in excess of the Benchmark Rate as calculated/illustrated in the Financial Model in accordance with Section 3.0, Table A of Section B of Part 2 of Schedule 3 to this RFP. For greater certainty, Credit Spreads do not include any hedge premiums, swap counter party spreads or any other applicable fees;

(33) "Data Room" is defined in RFP Section 2.4(1);

(34) "Design and Bid Fee" means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal, as determined by the Sponsors in accordance with RFP Section 10.3.2;

(35) "Design Consultation Process" is defined in Section 1.0(a) of Schedule 2 to this RFP;

(36) "Design Consultation Session" is defined in Section 1.0(b) of Schedule 2 to this RFP;

(37) "Design Consultation Team" is defined in Section 1.0(a) of Schedule 2 to this RFP;

(38) "Design Feedback Meeting" is defined in Section 1.0(b) of Schedule 2 to this RFP;

(39) "Design Presentation Meeting" is defined in Section 1.0(b) of Schedule 2 to this RFP;

(40) "Design Submission" means the component of the Proposal submitted in response to the requirements set out in Section 5.0 of Part B of Part 1 of Schedule 3 to this RFP;

(41) "Draft Lenders Commitment Letter" is defined in RFP Section 5.5(4);

(42) "East Durham Link Section" means those Initial Works constituting the portion of Phase 2 consisting of the following as more particularly described in the Design and Construction Specifications: (i) ●;

(43) "East Durham Link Section Annual OM&R Payment Amount" is defined in Section 2.17 of Part E of Part 2 of Schedule 3 to this RFP;

(44) "Evaluation Categories" is defined in Section 2.0 of Part B of Part 4 of Schedule 3 to this RFP and "Evaluation Category" shall be construed accordingly;

(45) "Existing Phase 2 Infrastructure" means ●;

(46) "Exempt Financial Institution" is defined in RFP Section 10.1(3);

(47) "Evaluation Committee" is defined in RFP Section 6.1(1);

(48) "Fairness Monitor" is defined in the RFP Data Sheet;

(49) "Final Credit Spread Election Facilities" is defined in RFP Section 5.5(2)(e);

(50) "Final Credit Spread Lock-in Date" is defined in RFP Section 5.5(3);

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- (51) "Final Proposal Score" is defined in RFP Section 6.3.6(2);
- (52) "Financial Close" has the meaning given in the Project Agreement;
- (53) "Financial Model" means the computer model a Proponent has used and which is proposed to become the Financial Model under the Project Agreement in the format specified in Part 2 of Schedule 3 to this RFP;
- (54) "Financial Services Provider" means any Lender and any other provider of financial services or products;
- (55) "Financial Submission" means the component of the Proposal submitted in response to the requirements set out in Part 2 of Schedule 3 to this RFP;
- (56) "Financial Submission Information" means the information contained in the Proponent's Financial Submission;
- (57) "Financing Timetable" is defined in RFP Section 9.2(2);
- (58) "FIPPA" is defined in RFP Section 3.8.1(1);
- (59) "First Credit Spread Lock-in Date" is defined in RFP Section 5.5(2);
- (60) "First Negotiations Proponent" is defined in RFP Section 8.1(1)(b);
- (61) "Freeway" has the meaning given in the Project Agreement.
- (62) "Full Time Employee" means an employee who, (i) is an employee listed on the permanent payroll; (ii) receives such customary benefits of full time employees, such as pension plan participation and vacation pay; and (iii) works at least thirty (30) hours per week;
- (63) "General RFIs" is defined in RFP Section 3.2.2(1)(a)(i);
- (64) "Government of Ontario" means Her Majesty in Right of the Province of Ontario and all ministries, agencies, boards, commissions and/or corporations thereof;
- (65) "Held Pricing Facilities" is defined in RFP Section 5.5(1)(b)(ii);
- (66) "Highway 407 East Phase 1" means the construction of Highway 407 ETR from Brock Road in Pickering to Harmony Road in Whitby/Oshawa (approx 20.3 km) includes the West Durham Link (WDL), east of Lake Ridge Road, serving as a north-south freeway connector to Highway 401 (approx 10 km);
- (67) "Highway 407 ETR" means the King's Highway in Ontario known and defined in the *Highway 407 Act, 1998* as "Highway 407";
- (68) "HST" means Harmonized Sales Tax;

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- (69) "Identified Proponent Parties" is defined in RFP Section 3.6(1);
- (70) "includes" and "including" means "includes without limitation" and "including without limitation" respectively;
- (71) "Indicative Credit Spread Benchmarks" is defined in Section 2.8 of Part E of Part 2 of Schedule 3 to this RFP;
- (72) "Ineligible Person's Affiliate" is defined in RFP Section 3.9.2(1);
- (73) "Ineligible Persons" is defined in RFP Section 3.9.2(1);
- (74) "Infrastructure Ontario" is defined in RFP Section 1.1(1);
- (75) "Innovation Submissions" means the components of the Proposal submitted in response to the requirements set out in Part II of Part 3 of Schedule 3 to this RFP and that includes all information required pursuant to Part B of Part II of Part 3 of Schedule 3 to this RFP;
- (76) "Innovation Submission Meeting" is defined in Section 4.0 of Part A of Part 3 of Schedule 3 to this RFP;
- (77) "IO" is defined in RFP Section 1.1(1);
- (78) "IOCIP" is defined in RFP Section 3.11.3(1);
- (79) "IOCIP Broker of Record" means ●;
- (80) "IPFP Framework" is defined in RFP Section 1.1(5);
- (81) "Key Personnel" means those individuals identified in the Proponent's Prequalification Submission as key personnel;
- (82) "Lenders" means the lenders providing the debt financing described in the Financial Submission;
- (83) "Lenders Commitment Letter" is defined in RFP Section 5.5(4);
- (84) "Letter of Credit" is defined in RFP Section 9.1(2);
- (85) "MAC" is defined in Section 1.1 of Part E of Part 2 of Schedule 3 to this RFP;
- (86) "Major Re-scoping" is defined in Part 3 of Schedule 3 to the RFP;
- (87) "Ministry" is defined in the RFP Data Sheet;
- (88) "Mini-Perm Financing" has the meaning given in the Project Agreement.

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- (89) "Mini-Perm Period" is defined in Section 3.2(d)(i) of Part B of Part 4 of Schedule 3 to this RFP;
- (90) "MOI" is defined in RFP Section 1.1(5);
- (91) "MTO" means the Ministry of Transportation Ontario;
- (92) "Negotiations Proponents" is defined in RFP Section 8.1(1)(b);
- (93) "NPV" means net present value;
- (94) "OHSA" means the *Occupational Health and Safety Act*, R.S.O. 1990 c.0.1;
- (95) "OIPC" is defined in RFP Section 1.1(1);
- (96) "Operational Term" has the meaning given in the Project Agreement;
- (97) "Operations, Maintenance and Rehabilitation Plan" is defined in Section 7.1 of Part B of Part 1 of Schedule 3 to this RFP;
- (98) "Phase 2" has the meaning given to it in Schedule 1 to this RFP;
- (99) "Phase 2a" has the meaning given in the Project Agreement.
- (100) "Phase 2a Substantial Completion Payment" is defined in Section 2.19 of Part E of Part 2 of Schedule 3 to this RFP;
- (101) "Preferred Proponent" is defined in RFP Section 1.1(2);
- (102) "Prequalification Stage" is defined in RFP Section 1.3(1)(a);
- (103) "Prequalification Submission" is defined in RFP Section 1.2(1);
- (104) "Prequalified Parties" is defined in RFP Section 1.2(1);
- (105) "Price Adjustment Envelope" is defined in Part 3 of Schedule 3 to the RFP;
- (106) "Price Submission Form" means Schedule 6 to this RFP;
- (107) "Project" is defined in RFP Section 1.1(6);
- (108) "Project Agreement" are those documents listed as the "Project Agreement" in the RFP Data Sheet;
- (109) "Project Co" is the Preferred Proponent that has executed the Project Agreement with the Signing Party or Parties;

- (110) "Project Sustainability Plan" is defined in Section 4.1 of Part B of Part 1 of Schedule 3 to this RFP;
- (111) "Proponent" is defined in RFP Section 1.1(2);
- (112) "Proponent Representative" is defined in RFP Section 1.2(2);
- (113) "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 a Proposal in this RFP Process;
- (114) "Proponents Meeting" is defined in RFP Section 3.4.1(1);
- (115) "Proposal" is defined in RFP Section 1.1(2);
- (116) "Proposal Information" is defined in RFP Section 3.8.4(5);
- (117) "Proposal Information Licence" is defined in RFP Section 3.8.4(4);
- (118) "Proposal Validity Period" is defined in RFP Section 5.4(1);
- (119) "QMS" is defined in Section 2.2 of Part B of Part 1 of Schedule 3 to this RFP;
- (120) "Quality Management Plan" is defined in Schedule 11 of the Project Agreement;
- (121) "Quality Management System" is defined in Schedule 11 of the Project Agreement;
- (122) "Rectification Notice" is defined in RFP Section 5.5(5)(a);
- (123) "Rectification Notice Response" is defined in RFP Section 5.5(5)(a);
- (124) "Refinancing" has the meaning given in the Project Agreement;
- (125) "Rehabilitation Payment" is defined in Part A of Schedule 20 to the Project Agreement;
- (126) "Re-scope Components" has the meaning given in Part 3 of Schedule 3 to the RFP;
- (127) "RFI" is defined in RFP Section 3.2.2(1);
- (128) "RFP" means this Request for Proposals;
- (129) "RFP Data Sheet" means Schedule 1 to this RFP;
- (130) "RFP Documents" is defined in RFP Section 2.1(1);
- (131) "RFP Process" is defined in RFP Section 1.1(3);

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- (132) "RFQ" is defined in RFP Section 1.2(1);
- (133) "Routine Re-scoping" is defined in Part 3 of Schedule 3 to the RFP;
- (134) "Scheduled Visits" is defined in RFP Section 3.5.1(1);
- (135) "Second Negotiations Proponent" is defined in RFP Section 8.1(1)(b);
- (136) "Self Reporting PSOS Checklist" is defined in Section 5.3 of Part B of Part 1 of Schedule 3 of this RFP;
- (137) "Severe Market Disruption Event Date" is defined in RFP Section 10.3.2(1)(d)(i);
- (138) "Signing Parties" is defined in RFP Section 1.1(7);
- (139) "Sponsors" is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (140) "Spread Decrease" is defined in Section 2.1 of Part C of Part 2 of Schedule 3 to this RFP;
- (141) "Submission Deadline" is defined in RFP Section 3.1(1);
- (142) "Submission Requirements" means all of the submission requirements set out in this RFP;
- (143) "Substantial Completion Payment" is defined in Section 2.20 of Part E of Part 2 Schedule 3 to this RFP;
- (144) "Technical Adjustment Envelope" is defined in Part 3 of Schedule 3 to the RFP;
- (145) "Technical Submission" means the component of the Proposal submitted in response to the requirements set out in Part 1 of Schedule 3 to this RFP;
- (146) "Technical Submission Information" means the information contained in the Proponent's Technical Submission;
- (147) "Termination Notice" is defined in RFP Section 5.5(5)(b);
- (148) "Timetable" is defined in RFP Section 3.1(1);
- (149) "Topic Meetings" is defined in Section 18.0(a) of Schedule 2 to this RFP;
- (150) "Total Project Capital Costs" means all costs expected to be incurred by the Proponent until Substantial Completion, as set out in the Financial Model. For example, Total Project Capital Costs includes all construction costs, IOCIP costs, Cash Allowance Amounts, design

fees, development fees, other consultants' costs, and interest and other construction period financing costs;

(151) "Triggering Event" is defined in Part 3 of Schedule 3 to the RFP;

(152) "Traffic Management Plan" is defined in Schedule 15-1 of the Project Agreement;
and

(153) "Variances" is defined in Section 5.3.1(b) of Part B of Part 1 of Schedule 3 to this RFP.

For Information Only