

Infrastructure Ontario

**Alternative Financing and
Procurement Project**

REQUEST FOR PROPOSALS

Build/Finance Project

Runnymede Healthcare Centre Redevelopment Project

RFP No. OIPC-07-18-I017

This Request for Proposals Closes at 2:00:00 p.m., July 18, 2007

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CONFIDENTIAL



RUNNYMEDE
HEALTHCARE CENTRE

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For Information Purposes Only

REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

(1) This Request for Proposals (“RFP”) is issued by the Ontario Infrastructure Projects Corporation (“Infrastructure Ontario” also known as “OIPC”), 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) Infrastructure Ontario will manage the RFP Process on behalf of the Sponsors and Infrastructure Ontario shall be the single point of contact for Proponents on behalf of the Sponsors. During the RFP Process, Proponents shall contact Infrastructure Ontario only through the Contact Person as set out in RFP Section 3.2.1.

(3) The Project to which this RFP applies is a ReNew Ontario initiative and has been approved to proceed as an alternative financing and procurement project. Details relating to the Ministry of Public Infrastructure Renewal’s (“PIR”) “Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector” (the “IPFP Framework”) are available on the Ministry of Public Infrastructure Renewal website at www.pir.gov.on.ca. The IPFP Framework sets out five fundamental principles for the procurement of public infrastructure, including the Project, as follows:

- (a) The public interest is paramount;
- (b) Value for the investment of public money must be demonstrated;
- (c) Appropriate public control and ownership must be maintained;
- (d) Accountability must be maintained; and
- (e) Fair, transparent and efficient processes must be used.

(4) 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.

(5) While the Sponsors will manage the procurement process in respect of the Project, the Preferred Proponent, subject to the requirements and conditions of the RFP Documents, would actually enter into the Project Agreement Documents 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 Project Agreement Documents in the RFP Data Sheet, neither Infrastructure Ontario nor the Government of Ontario will be parties to the Project Agreement Documents.

(6) In this RFP, Prequalified Parties that submit documents in response to this RFP are referred to as “Proponents” and their submissions (including the Supplementary Information to be submitted in accordance with this RFP) are referred to as “Proposals”. The entity that is selected by

the Sponsors to enter into the Project Agreement Documents is referred to as the “Preferred Proponent”. For the purposes of convenience, in this RFP the expression “Proponents” also includes Prequalified Parties prior to the submission of their Proposals. However, a Prequalified Party has no rights or obligations under this RFP unless it submits a Proposal in accordance with this RFP. Once a Prequalified Party submits a Proposal in accordance with this RFP (and that Proposal is not withdrawn prior to the Submission Deadline), all rights and obligations of the RFP are applicable to the Proponent.

(7) The procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on Financial Close as defined in the Project Agreement Documents or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period) whichever is first (the “RFP Process”). All rights and obligations arising out of the RFP (the bidding contract or “Contract A”) terminate on Financial Close.

1.2 Prequalified Parties, Prequalified Subcontractors and Proponent Representatives

(1) 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 for this RFP Process are referred to as a Prequalified Party’s “Prequalification Submission”.

(2) 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 Proponent (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.

(3) If the Sponsors have prequalified subcontractors (“Prequalified Subcontractors”) those Prequalified Subcontractors are listed in the RFP Data Sheet. If Prequalified Subcontractors are listed in the RFP Data Sheet, Proponents may choose any of the Prequalified Subcontractors to carry out the applicable work. For those areas of work in which the Sponsors have identified Prequalified Subcontractors, only the Prequalified Subcontractors are eligible to participate in a Proponent’s Proposal.

1.3 Overview of the Stages of Project Procurement and Implementation

(1) Infrastructure Ontario 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 Infrastructure Ontario that they are prequalified for the RFP Process.

(b) Stage 2 – RFP Process

For those Proponents not identified as the Preferred Proponent, the RFP Process begins with the issuance of the RFP to the Prequalified Parties and ends on Financial Close as defined in the Project Agreement Documents or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period), whichever is first. For the Preferred Proponent, the RFP Process terminates on Commercial Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period), whichever is first.

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

Once the Preferred Proponent and the Signing Parties have executed the applicable Project Agreement Documents on commercial close (“Commercial Close”), the terms and conditions of the Project Agreement Documents shall determine how the Project is to proceed.

1.4 Fairness Monitor

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

SECTION 2 – THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

- (1) The RFP Documents (the “RFP Documents”) are:
 - (a) the Request for Proposals (“RFP”);
 - (b) Schedule 1 – RFP Data Sheet;
 - (c) Schedule 2 – Submission Forms consisting of
 - (i) Proposal Submission Form; and
 - (ii) Supplementary Information Submission Form;
 - (d) Schedule 3 – Technical and Price Forms consisting of:
 - (i) Form 3-1 - Guaranteed Price Form;
 - (ii) Form 3-2 – Contractor Suggested Alternative Prices Form;
 - (iii) Form 3-3 – Form of Bid Bond;
 - (iv) Form 3-4 – Surety’s Consent;

- (v) Form 3-5 – Contract Time Form;
 - (vi) Form 3-6 – Preliminary Construction Schedule;
 - (vii) Form 3-7 – Revised Key Personnel Form; and
 - (viii) Form 3-8 – Breakdown of Guaranteed Price Form; and
- (e) Schedule 4 – Project Agreement Documents (including all related Schedules, Appendices and Attachments) as listed in the RFP Data Sheet; and
- (f) Addenda to the RFP Documents, if any.
- (2) 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.
- (3) The RFP and Schedules 1, 2 and 3 are contained in Volume 1 of the RFP Documents. The Project Agreement Documents are set out in additional Volumes to the RFP Documents as listed in the RFP Data Sheet.

2.2 Conflicts or Inconsistencies in Documents

- (1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFP Documents the following shall apply:
- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, the RFP shall prevail over the Schedules to the RFP during the RFP Process;
 - (b) in respect of all matters of interpretation of the Project and the Project Agreement Documents themselves during the RFP Process, the Project Agreement Documents shall prevail over the RFP and all other Schedules to the RFP; and
 - (c) for the purpose of resolving conflicts or inconsistencies among the documents that constitute the Project Agreement Documents, the provisions of the Project Agreement Documents shall govern.
- (2) Despite RFP Section 2.2(1), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any term or condition in another RFP Document, the Proponent shall notify the Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.1.
- (3) 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 placed in the Data Room shall govern.

(4) 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.

(5) 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 shall prevail over the same RFP Document of an earlier date. For the purposes of this RFP Section 2.2(5), the date of the RFP Document shall be determined by the date and time when the document was placed in the Data Room by Infrastructure Ontario.

2.3 Distribution of Documents to Proponents

(1) Infrastructure Ontario may circulate this RFP directly to each Proponents' Representative by e-mail. Except as provided in RFP Section 2.3(2), Infrastructure Ontario will circulate all other 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(2) and, in particular, have reviewed all documents in the Data Room immediately prior to submitting Proposals.

(2) Infrastructure Ontario may circulate some RFP Documents in paper copy. If Infrastructure Ontario intends to circulate some RFP Documents in paper copy, a statement to that effect will be in the RFP Data Sheet and Proponents will be notified of a paper copy circulation by e-mail or by way of a notice in the Data Room.

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); and
- (b) the provision of various types of background information for the Proponents' review ("Background Information").

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.

- (2) 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 and Background Information and, at all times, bases its actions or submissions during the RFP Process on only the most current RFP Documents or Background Information.

2.5 Proponent Investigations

(1) As a general principle each Proponent and each of its Proponent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project or the Project Agreement Documents. The Proponent's 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. The Proponent's and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or to rely on information provided by the Sponsors may be more particularly set out in the Project Agreement Documents.

(2) Except as explicitly provided in the Project Agreement Documents, 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 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 by or through the Sponsors. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponent's and Proponent Team Members sole risk and without recourse against the Sponsors or the Government of Ontario.

SECTION 3 – THE RFP PROCESS

3.1 RFP Process Timetable

(1) The deadline for submission of Proposals (the "Submission Deadline") and the general timetable for the RFP Process (the "Timetable") are set out in the RFP Data Sheet.

(2) Except as provided in RFP Section 5.4, the Sponsors may amend the Timetable in their sole discretion,

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

(3) If the Sponsors extend the Submission Deadline, all other obligations of Proponents shall thereafter be subject to the extended deadline.

3.2 Questions and RFP Document Comments

3.2.1 Contact Person

(1) Except as set out in RFP Section 3.4.2, the Proponents shall submit all questions and other communications regarding the RFP, the RFP Process, the Project Agreement Documents and their Proposals to the Contact Person by e-mail at the coordinates listed in the RFP Data Sheet and in accordance with RFP Section 3.2.2.

3.2.2 Clarification/Question/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 to the Sponsors during the RFP Process:

- (a) Proponents are permitted to submit questions or requests for information (referred to generally as “RFIs”) categorized as follows:
 - (i) questions that are of general application and that would apply to other Proponents (“General Questions”); and
 - (ii) questions that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“Commercially Confidential Questions”);
- (b) If the Sponsors disagree with the Proponent’s categorization of a question as a Commercially Confidential Question, the Sponsors will give the Proponent an opportunity to either categorize the question as a General Question or to withdraw the question;
- (c) If the Sponsors determine, in their sole discretion, that a Commercially Confidential Question, 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 Question; and
- (d) If the Sponsors agree with the Proponent’s categorization of a Commercially Confidential Question, then the Sponsors will provide a response to that question to only the Proponent that submitted the question.

(2) Responses to questions 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 questions require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.7. Only responses to an RFI that have been incorporated into an Addendum will modify or amend any of the RFP documents as set out in

the Data Sheet and otherwise will have no force or effect whatsoever and may not be relied upon by any Proponent.

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

(4) Proponents shall submit all RFIs by electronic upload to the RFP Data Room as attachments with the following format:

Request for Information		
Name of Project		
Name of Proponent		
Name of RFP Document and Section Reference	Question/Request for Information	Category of Question – “General” or “Confidential”

(5) The Sponsors will respond to requests for information and questions in Response to RFIs documents circulated to Proponents in accordance with the schedule set out in the Timetable. The Response to RFIs documents are not RFP Documents and do not amend the RFP Documents.

(6) It is the Proponent’s obligation to seek clarification from the Sponsors of any matter it considers to be unclear. The Sponsors are not responsible in any way whatsoever for any misunderstanding 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.

3.2.3 RFP Documents Comments

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

3.3 Communications Restrictions

3.3.1 Communications with Municipalities, Other Government Authorities and Utilities

(1) Except as set out in RFP Section 3.3.2, Proponents may be required to communicate directly with any municipality, governmental authority or utility with respect to municipal, utility or other types of governmental requirements related to the Project. Any special rules with respect to these communications are set out in the RFP Data Sheet. Under no circumstances will these special rules override the provisions of RFP Section 3.3.2.

(2) The Sponsors are not, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents receive or believe they may have received from a municipality, a governmental authority, or a utility. Proponents and Proponent Team Members rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors.

3.3.2 Prohibited Contacts and Lobbying Prohibition

(1) Proponents and Proponent Team Members shall not engage in any form of political or other lobbying whatsoever to influence the outcome of the RFP Process.

(2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents or Proponent Team Members or their Advisors 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 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) the Ministry of Public Infrastructure Renewal; 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 Section 3.3.2(2)(a) to (d).

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

- (a) take any action in accordance with RFP Section 7.1.2; or

- (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

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

3.3.3 Media Releases, Public Disclosures and Public Announcements

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

(2) Except for disclosures necessary to permit the Proponent to discuss the Project with prospective subcontractors in order to solicit those subcontractors' participation in the Project, neither the Proponents or the Proponents Team Members or any of their respective Advisors or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsors' prior written consent, which consent may be arbitrarily withheld or delayed in the Sponsor's sole discretion. Proponents, Proponent Team Members and their Advisors and representatives are permitted to state publicly that they are participating in the RFP Process.

3.3.4 Restrictions on Communications between Proponents – No Collusion

(1) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Proposal or the Proposal of the other Proponent in a fashion that would contravene Applicable Law as defined in the Project Agreement Documents. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

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

3.4 Meetings with Proponents

3.4.1 General Proponents Meeting

(1) The Sponsors may, in their sole discretion, convene a general Proponents meeting ("Proponents Meeting") on a date and at a time set out in the Timetable and at a location set out in the RFP Data Sheet. While attendance at the Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend.

(2) Proponents may ask questions and seek clarifications at the Proponents Meeting. If the Sponsors give oral answers at the Proponents Meeting, those answers shall not be considered final unless the Proponent also submits those questions in accordance with RFP Section 3.2.2.

3.4.2 Commercially Confidential Proponent Meetings

(1) The Sponsors may, in their sole discretion, convene commercially confidential meetings with individual Proponents (“Commercially Confidential Meetings”). These Commercially Confidential Meetings may be either or both of the following:

- (a) bilateral meetings between the Sponsors’ and their representatives and Advisors and individual Proponents and their representatives and Advisors, to discuss the Project Agreement Documents and the Proponent’s suggested amendments to the Project Agreement Documents; and
- (b) bilateral meetings between the Sponsors’ and their representatives and Advisors and individual Proponents and their representatives and Advisors to discuss the Innovations Submissions being considered by the Proponents for inclusion in their Proposals, if any.

(2) Whether the Sponsors intend to hold Commercially Confidential Meetings and location of those meetings is set out in the RFP Data Sheet. The approximate date and time of Commercially Confidential Meetings is set out in the Timetable.

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

(4) No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meetings by the Sponsors or the Sponsors’ Advisors 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, except when and only to the extent expressly confirmed in an Addendum to the RFP issued in accordance with RFP Section 3.7.

3.5 **Visiting the Site and the Existing Facilities**

3.5.1 Scheduled Visits

If the Sponsors have established scheduled dates for Site visits and Existing Facilities visits (“Scheduled Visits”) for all Proponents and their representatives and Advisors, the dates and times of the Scheduled Visits will be set out in the RFP Data Sheet. For clarity, Scheduled Visits are in addition to the Proponent visits scheduled in accordance with RFP Sections 3.5.2 and 3.5.3.

3.5.2 Additional Site Visits

(1) Except for Scheduled Visits, Proponents are not permitted to access the Site except by prior written arrangement with the Contact Person for each access to the Site. The Site address and a brief description of the Site is set out in the RFP Data Sheet and is described fully in the Project Agreement Documents.

(2) A Proponent that wishes to arrange a Site visit other than a Scheduled Visit shall submit its request to the Contact Person and shall describe the proposed date(s) and time(s) it would like to carry out the Site visit as well as the purpose for the Site visit(s). The Proponent's request must be submitted at least 48 hours in advance of the time for the Site visit(s).

(3) The Sponsors may, in their sole discretion and through the Contact Person, require that a Sponsors' representative be present to monitor the Proponent's activities during the Site visit. The Contact Person will confirm whether a Sponsors' representative will be present at the Site visit at the time the Site visit is approved and scheduled. The period(s) during which Site visits will be permitted is set out in the Timetable.

3.5.3 Additional Existing Facilities Visits

(1) Except for Scheduled Visits, Proponents are not permitted to access any Existing Facilities except by prior written arrangement with the Contact Person for each access to the Existing Facilities. The Existing Facilities, if any, are listed in the RFP Data Sheet and are described more fully in the Project Agreement Documents.

(2) A Proponent that wishes to arrange an Existing Facilities visit, other than a Scheduled Visit, shall, submit a request to the Contact Person at least 48 hours prior to the Proponent's proposed date and time for an Existing Facilities visit. The request shall set out the,

- (a) proposed date and time, and alternate date and time, of the proposed visit;
- (b) purpose of the visit;
- (c) areas of Existing Facilities for which access is requested; and
- (d) names, titles and contact information of the Proponent's representatives who will be attending the visit.

(3) If the Proponent has received approval for and written confirmation of an Existing Facilities visit from the Contact Person, unless otherwise set out in the Contact Person's confirmation the following shall apply to the Existing Facilities visit:

- (a) All Proponent representatives upon arrival at each Existing Facility shall report to the appropriate authority at the Existing Facility, sign in as required by the Existing Facility and receive and wear an identification badge;
- (b) All Proponent representatives shall strictly obey all instructions from Sponsors' representatives during the visit and shall comply with all Site-specific security, safety or other types of requirements;
- (c) The Proponent shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying or working in the Existing Facility;

- (d) The Proponent's representatives shall visit only those specific areas of the Existing Facilities to which the Proponent has been granted access in the Contact Person's confirmation; and
- (e) The Proponent's 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's representatives only in the specific areas of the Existing Facility for which consent to photograph has been given.

(4) The Proponent acknowledges that, because the Existing Facilities are in use, unforeseen circumstances can arise at the Existing Facilities and the Sponsors may, in their sole discretion, cancel or reschedule the visit, change the areas of access of the visit or otherwise change the visit on short notice or no notice to the Proponent.

3.6 Changes to Proponents and Proponent Team Members

3.6.1 Changes to Proponents and Proponent Team Members

(1) 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 Personnel, or other parties identified in the Proponents Prequalification Submission (the "Identified Proponent Parties") without the prior written consent of the Sponsors.

(2) Despite RFP Section 3.6.1(1), the Sponsors will permit Proponents to request a change in their Identified Proponent Parties.

(3) If, prior to the Submission Deadline a Proponent wishes to request a change in its Identified Proponent Parties, the Proponent shall notify the Contact Person no later than 7 days prior to the Submission Deadline. That notification shall clearly identify the proposed change in the Identified Proponent Party including a proposed substitute and including sufficient documentation to demonstrate that the proposed substitute would have met or exceeded any applicable criteria applied during the prequalification process.

(4) The Proponent shall provide any further documentation as may be reasonably requested by the Sponsors to assess any proposed substitute. If the Sponsors, in their sole discretion, consider the proposed substitute to be acceptable the Sponsors may consent to the substitution. The Sponsors' consent to such substitution, however, may be subject to such terms and conditions as the Sponsors may require. If the proposed substitute is not acceptable to the Sponsors, the Proponent shall propose an alternate substitute for review by the Sponsors in the same manner as the first proposed substitute. The Sponsors may, in their sole discretion, disallow any actual or proposed change.

(5) In the case of an actual change in the Identified Proponent Parties made by the Proponent without consent by the Sponsors or a change proposed after the Submission Deadline, the Sponsors may disqualify the Proponent and terminate its continued involvement, or allow the Proponent to continue under such terms and conditions as the Sponsors in their sole discretion may require.

(6) If on or after the Submission Deadline and prior to execution of the applicable Project Agreement Documents there is an actual or proposed addition, deletion, substitution or other change in the membership or effective control of an Identified Proponent Party, or if there is a change in circumstances that may materially adversely affects an Identified Proponent Party in a way which could impair the Identified Proponent Party's ability to perform its respective obligations under the Project Agreement Documents, then the Proponent shall promptly notify the Sponsors in writing by delivery or facsimile to the Contact Person. The Sponsors may, in their sole discretion, refuse to accept a change in an Identified Proponent Party that occurs or is requested by the Proponent after the Submission Deadline and may, in its sole discretion, disqualify the Proponent from continuing in the RFP Process.

3.7 Addenda/Changes to the RFP Documents

(1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline. The Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors or any Sponsors' Representative, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The approximate final date that the Sponsors will issue an Addendum in respect of the Project Agreement Documents is set out in the Timetable, however the Sponsors may issue Addenda at any time.

(2) 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.

(3) The Sponsors shall issue Addenda by placing them in the Data Room and notifying the Proponents' Representatives by e-mail that an Addendum has been placed in the Data Room.

(4) 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 RFP Section 3.7.

3.8 Freedom of Information, Confidentiality and Copyright Matters

3.8.1 Freedom of Information and Protection of Privacy Act

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

(2) Proponents are also advised that FIPPA does provide protection for confidential and proprietary business information provided that such information is properly designated as such in the Proposals. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals. The Sponsors strongly suggest that any designations of confidential or proprietary business information made by Proponents be made on each page of the Proposal on which the confidential or proprietary information appears.

(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 the Applicable Law.

3.8.2 Confidentiality Agreements

(1) No later than 5 days after a request by the Sponsors, the Proponent shall cause each of its employees and Advisors and its Proponent Team Members and each of their employees 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.

3.8.3 Confidential Information

(1) For the purpose of this RFP Process, "Confidential Information" means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise procured, in any way, whether before or after the RFP Process provided by the Sponsors or the Government of Ontario in connection with the RFP Process, the RFP Documents or the Project.

- (2) The Proponent agrees that all Confidential Information,
- (a) shall remain the sole property of the Government of Ontario or the Sponsors, as applicable, and the Proponent shall treat it as confidential;
 - (b) shall not be used by the Proponent for any other purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Sponsors or the Government of Ontario, as applicable;
 - (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent's preparation of its Proposal or the performance of any subsequent agreement relating to the Project with the Sponsors, the Government of Ontario, as applicable, 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 ten 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. Each Proponent shall indemnify each of the Sponsors, each of their related entities and the Government of Ontario 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 for each of the representatives of the Sponsors and of such related entities with respect to all rights contemplated hereunder arising in favour of a related entity or any such representative, and that the Sponsors have agreed to accept such trust and hold and enforce such rights on behalf of each related entity and such 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 each of their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors, the Government of Ontario and any related entity 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 related entity.

(5) The provisions of this RFP Section 3.8.3 shall survive any cancellation of this RFP Process and the conclusion of the RFP Process.

(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 secrecy with respect to such information.

3.8.4 Copyright and Use of Information in Proposals

(1) The Proposal and all Proponent Information submitted by the Sponsors during the RFP Process shall become the property of the Sponsors upon the submission.

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

(3) All requirements, designs, documents plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the sole 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) Unless the Sponsors otherwise agreed in writing, the Sponsors shall be entitled to retain and use, without compensation to any Proponent or anyone else, all Proposals and any additional information submitted by or through Proponents in connection with their Proposals, including any concept, element, idea or other information disclosed in or evident from the foregoing or which may be revealed during any meetings or interviews with Proponents (the "Proposal Information"). It is a fundamental condition of the Proponent's participation in the RFP process that the Sponsors shall have and shall be deemed to be granted with respect to a Proposal Information a royalty fee-free licence, without restriction, to use for the Project, including without limitation to use for any one or more of agreements with any Preferred Proponent, agreements with third parties if Preferred Proponent negotiations are unsuccessful, or any contract in relation to the subject matter of the Project, and that the Sponsors shall have the right to grant royalty-free sub-licenses to any and all of Infrastructure Ontario and Ministry for other projects.

(5) For the purpose of RFP Section 3.8.4(4) "Proposal Information" includes,

- (a) all information contained in a Proposal or which is disclosed by or through a Proponent to the Sponsors during the evaluation of Proposals or during the process of executing any Project Agreement Documents; and
- (b) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Project Agreement Documents.

(6) Proponents shall ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the Sponsors 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 Sponsors' ability to use any of the Proposal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against the Sponsors, the Government of Ontario, and each of their respective Advisors, and that the provisions of Section 3.8.4 of this RFP shall take precedence and govern.

3.9 Conflict of Interest and Ineligible Proponent Team Members and Advisors

3.9.1 Conflict of Interest

(1) Proponents and Proponent Team Members and each of their Advisors, shall disclose perceived, potential and actual Conflicts of Interest and any existing business relationships they may have with any one or more of the Sponsors, any of the Sponsors' board members, Ministry and the Government of Ontario in their Proposal Submission Forms.

(2) If a Proponent, a Proponent Team Member or an Advisor, prior to or following submission of its Proposal, discovers any perceived, potential or actual Conflicts of Interest or any existing business relationships the Proponent may have with any one or more of the Sponsors, any of the Sponsors' board members, Ministry, or the Government of Ontario, the Proponent shall promptly disclose the Conflict of Interest or existing business relationship to the Sponsors in a written statement to the Contact Person.

(3) On the request by 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 or existing business relationship. The Proponent shall submit any additional information to the Sponsors that the Sponsors consider necessary to properly assess the Conflict of Interest or nature of the existing business relationship.

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

(5) Without limiting the generality of RFP Section 3.9.1(4) or (6), the Sponsors may in their sole discretion require the Proponent or Proponent Team Member to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest or who has the existing business relationship.

(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, whether arising out of existing business relationships or otherwise. Any 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 or existing business relationship.

(7) For the purposes of this RFP Process "Conflict of Interest" includes any situation or circumstance where in relation to the Project, the Proponent's or any Proponent Team Member's other commitments, relationships or financial interests,

(a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of independent judgment by any personnel of the Sponsors or their Advisors; or

(b) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Project Agreement Documents if that Proponent was determined to be the Preferred Proponent under the RFP Process.

3.9.2 Ineligible Proponent Team Members

(1) As a result of their involvement in the Project, the persons named in the RFP Data Sheet as "Ineligible Persons" and, subject to the rules set out below, any person controlled by, that controls or that is under common control with the Ineligible Persons (each an "Ineligible Persons

Affiliate”) and the subcontractors, consultants, employees and representatives of the Ineligible Persons are not eligible to participate as Proponent Team Members or Advisors.

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

(3) An Ineligible Persons Affiliate may be eligible to participate as a Proponent Team Member or Advisor, only after it has obtained a written consent from the Sponsors permitting it to participate as a Proponent Team Member or Proponent Advisor. To obtain consent for an Ineligible Persons Affiliate to participate as a Proponent Team Member or Proponent Advisor, 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 Persons Affiliate that the Proponent wishes to include on its team or as a Proponent Advisor;
- (b) information regarding the Ineligible Persons 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 any potential Conflict of Interest.

(4) Upon the Contact Person’s receipt of a Proponent’s properly completed request for consent, the Sponsors shall, in their sole discretion, make a determination as to whether they consider there to be a real, perceived or potential Conflict of Interest and whether such real perceived or potential 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 Persons Affiliate is considered to have a Conflict of Interest that cannot be properly managed, mitigated or minimized, it shall be added, by the Sponsors, to the Ineligible Persons list by Addendum.

3.10 Proponent Costs

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

- (a) the preparation, presentation and submission of its Proposal;
- (b) attendance at the Proponents Meeting or at any meeting with the Sponsors;
- (c) due diligence and information gathering processes;
- (d) Site visits or Existing Facility visits;
- (e) preparation of responses to questions or requests for information from the Sponsors;
- (f) preparation of the Proponent’s own questions during the clarification process; and

(g) negotiations.

(2) Except as explicitly provided in RFP Section 10.3, the Sponsors are not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

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

(a) Comprehensive General Liability insurance, having an inclusive limit of not less than \$10,000,000 for each occurrence or accident and covering all sums which the Proponent 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 carried out in connection with this RFP and RFP process. The policy shall have added as additional named or unnamed insureds each of the Sponsors (and each of their respective directors, officers, employees consultants and agents), and an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by the Sponsors; and

(b) Vehicle Public Liability and Property Damage insurance, in the amount of \$2,000,000 per occurrence, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants, Advisors and agents) while on or at the Site or on or at any facilities or premises of the Sponsors.

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

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

(4) All insurance policies required to be obtained by Proponents shall provide that the insurance shall not be cancelled, reduced, restricted, modified or changed in any way without the insurer giving at least 60 calendar days prior written notice to the Sponsors.

3.11.2 Workplace Safety during the RFP Process

(1) As a condition of allowing access to the Site 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 by law, or, if such registration is not required by law, to provide evidence acceptable to it that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to it.

SECTION 4 – PROPOSAL – FORM AND CONTENT REQUIREMENTS

4.1 General Submission Requirements

4.1.1 Format of the Proposal

Proponents shall submit Proposals organized in accordance with and in the format set out in the RFP Section 4.1.2, Schedules 2 and 3 to the RFP and all instructions contained in RFP Section 5.1.2 (if applicable) and Schedules 2 and 3. The Proponents shall submit their documents in two phases in accordance with RFP Section 5.1.2.

4.1.2 Content of the Proposal – General

- (1) Proponents shall submit Proposals in the following parts as follows:
 - (a) Phase 1 Proposal Submission (Submission Deadline):
 - (i) Part A - a fully completed and properly executed Proposal Submission Form;
 - (ii) Part B - fully completed Forms, in accordance with the completion instructions set out in Schedule 3, as follows:
 - (A) Form 3-1 – Guaranteed Price Form;
 - (B) Form 3-2 – Contractor Suggested Alternative Prices Form;
 - (C) Form 3-3 – Form of Bid Bond;
 - (D) Form 3-4 – Surety's Consent;
 - (iii) Part C – fully completed Forms in accordance with the completion instructions set out in Schedule 3, as follows:
 - (A) Form 3-5 – Contract Time Form;
 - (B) Form 3-6 – Preliminary Construction Schedule;
 - (C) Form 3-7 - Revised Key Personnel Form;

- (b) Phase 2 – Supplementary Information (Supplementary Information Submission Deadline):
 - (i) Supplementary Part D – a fully completed and properly executed Supplementary Submission Form;
 - (ii) Supplementary Part E – fully completed Forms, in accordance with the completion instructions set out in Schedule 3, as follows:
 - (A) Form 3-8 - Breakdown of Guaranteed Price Form; and
 - (iii) Supplementary Part F – Financial Plan, Financial Model, Financing Letter and Innovation Submission Requirements completed in accordance with RFP Section 4.1.4.

4.1.3 Instructions for Parts A, B and C of the Proposal Submission

Proponents shall submit each of Parts A, B and C of their Proposals in accordance with the instructions set out on each of the applicable forms as attached in Schedule 2 and Schedule 3 to this RFP. Proponents are cautioned to review and follow the instructions that appear in each of the applicable forms.

4.1.4 Instructions for Supplementary Information Parts D, E and F of the Supplementary Submission

(1) Proponents shall submit each of Supplementary Parts D and E in accordance with the instructions set out on each of the applicable forms as attached in Schedule 2 and Schedule 3 to this RFP. Proponents are cautioned to review and follow the instructions that appear in each of the applicable forms.

(2) Proponents shall submit the financing plan (“Financing Plan”) and financial model (“Financial Model”) and financing letter (“Financing Letter”) in accordance with the following requirements:

- (a) The Proponent must submit a Financing Plan that demonstrates that it can sufficiently finance the Project from initial construction through to the end of the term of the Project Agreement Documents. The Financing Plan must clearly show the required timing of funds for construction. The Financing Plan must demonstrate the sources of finance and the level of commitment of the financing and, at a minimum, include the following information:
 - (i) Details of each source of financing, including equity, any construction or standby facilities, subordinated debt, capital markets debt, variation facilities and internally generated funds (separated into interest earned on deposits, reserve accounts and third party income). This must include the identity and credit status of each investor as well as the amount to be provided by each investor;

- (ii) For each investor that is subscribing for equity or quasi-equity (i.e. IPS or IDS products), details are required about the availability of equity / quasi-equity finance;
 - (iii) Details (including, where applicable, copies of all relevant agreements) evidencing and confirming the extent of support (including performance guarantees) that is to be provided in respect of the obligations and liabilities of Project Co by each of Project Co's shareholders, subcontractors and associated third parties. This must include details of the parent and ultimate parent company involvement in any and all such elements of support and details of how the Proponent will satisfy any terms of the guarantees;
 - (iv) Details of any working capital requirements and details of how these requirements will be met;
 - (v) Details of any standby facilities provided to meet the requirements of the Project Agreement Documents; and
 - (vi) To the extent that other forms of finance, other than debt and equity are to be used, the Proponent is to provide appropriate details equivalent to those requested for equity and debt.
- (b) With respect to supporting documentation to the Financing Plan, for all the financing providers, the Proponent must provide term sheets including, at minimum, the following information:
- (i) the identity of the arranger or underwriter;
 - (ii) type of facility;
 - (iii) purpose of facility;
 - (iv) availability period;
 - (v) the amount of financing proposed or committed and currency in which it is to be provided;
 - (vi) the drawdown schedule;
 - (vii) details of grace periods, including duration and contingency;
 - (viii) repayment or redemption schedules, maturity dates and prepayment terms (including make-whole clauses);
 - (ix) security, bonding or guarantee requirements and costs (from either parents or third parties);

- (x) arrangement, underwriting, commitment, agency and all other fees;
 - (xi) interest rates (whether fixed or floating) specifying the benchmark mark rate spreads thereon and margins, including a ratchet mechanism, if any;
 - (xii) requirements for reserve accounts;
 - (xiii) any proposed hedging arrangements in respect of interest rates;
 - (xiv) events of default and other similar arrangements;
 - (xv) step-in arrangements;
 - (xvi) conditions precedent;
 - (xvii) due diligence requirements;
 - (xviii) any other restrictions, requirements or conditions that may materially impact the Proponent's ability to raise financing or drawdown on committed financing after Financial Close;
 - (xix) if the Financing Plan is dependent on a credit rating, an indicative credit rating from one or more credit reference agencies; and
 - (xx) a confirmation letter from the Proponent's financial advisor stating that the Financing Plan is achievable and robust.
 - (xxi) with respect to the interest rate hedging strategy, the Proponent must also describe and provide details of its proposed interest rate hedging strategy that may be used, if any, including, the time period over which a hedge is expected to be in place and the proportion of the debt repayments that are to be hedged.
- (c) The Proponent must provide the Financial Model in Microsoft Excel format, showing all cash flows in sufficient detail to determine the source and use of funds on a monthly basis over the Contract Time (as defined in the Guaranteed Price Contract) and to calculate the Cost of the Financing. A sample financial model output will be provided in the Data Room and Proponents are encouraged to include it within the Financial Model. At a minimum, the Financial Model must include the following information:
- (i) Project Debt (means the principal amount issued under and secured by the Lending Agreements);
 - (ii) Interest Reference Rate (as defined in the Project Agreement Documents);
 - (iii) effective interest rate on outstanding borrowings for the purpose of extension of Contract Time (as defined in the Guaranteed Price Contract)

(e.g. the “fixed rate” under any interest rate swaps or similar amounts payable under any other hedging arrangements);

- (iv) Project Debt Interest Cost (means the budgeted amount of aggregate charges in respect of the Project Debt used to calculate the Cost of the Financing portion of the Guaranteed Price.);
 - (v) default interest rate under the lending agreement;
 - (vi) sub-debt, if applicable;
 - (vii) sub-debt cost, if applicable;
 - (viii) equity, if applicable;
 - (ix) projected draw-down monthly schedule including dates and amounts for all sources of funds;
 - (x) internal rate of return for the Project;
 - (xi) weighted average cost of capital; and
 - (xii) all related fee costs.
- (d) The Financial Model must adhere to the following parameters:
- (i) Start Date - Start date is the date of Financial Close;
 - (ii) Canadian Dollars - Where prices are requested in this RFP, prices are to be submitted in Canadian dollars;
 - (iii) Price Validity - With the except of an adjustment for movement in the relevant reference interest rate, all prices must remain firm and irrevocable for a period in accordance with the Proposal Validity Period and as otherwise specified in this RFP;
 - (iv) Interest Rate - The Proponent is required to provide the relevant benchmark rate it has used as priced at 10:00 a.m. local Toronto time on the Submission Deadline less 5 working days (e.g. if the Submission is May 10, 2007, then the relevant bench-marker is May 3, 2007) and all supporting information (including the screen from which benchmark rate was extracted, average life and / or drawdown and repayment profile) that would allow the Sponsors to verify the reference interest benchmark rates and the Proponent must also describe and provide details and explanations of any credit spread, funder’s margins and other adjustments to interest rate costs that the Proponent considers appropriate.
 - (v) Cash Allowances - The Proponent must,

- (A) confirm that the cash allowances as specified in the Project Agreement Documents are used in the Financial Model; and
 - (B) include all overhead and profit for this amount;
 - (vi) **Functionality Requirements** - The Financial Model must be a working model with complete linkages such that changes to base assumptions will drive all changes required throughout. Static financial data is not acceptable.
- (3) The Proponent must include in its Proposal Financing Letter in the form of an executed letter from a Lender or Lenders addressing the following issues:
- (a) the Lender's commitment to provide the Proponent with financing;
 - (b) the nature of the Lender's financing commitment at the Submission Deadline (e.g. fully underwritten approval or indicative financing);
 - (c) the Lender's understanding of the build finance model; and
 - (d) that the Lender will finalize the Implementing Agreements (as defined in the Project Agreement Documents) and achieve Financial Close in accordance with the Project Agreement Documents.
- (4) The Proponent may include in its Proposal, suggested innovations submissions ("Innovations Submissions") in accordance with the following requirements:
- (a) Proponents may attach to their Proposals the details of their proposed Innovation Submission. Proponents must submit separate information for each Innovation Submission.
 - (b) Each Innovation Submission must provide sufficient information and detail to enable the Sponsors to access the technical and financial merits of the innovation(s) proposed and must demonstrate that the Proponent, if chosen, can meet the responsibilities and obligations in executing the Project in accordance with the requirements set out in the Project Agreement Documents.
 - (c) Innovation Submissions, if any, must include the following information:
 - (i) a statement that the Innovation Submission requires no changes to the Project Agreement Documents (including any of its schedules) OR a list and full description of changes (include specific provisions and proposed language) required to the Project Agreement Documents (including any of its schedules);
 - (ii) identification of the rationale for the Innovation Submission;

- (iii) a description of the specific benefits, including a breakdown of any financial benefits, that will accrue to the Sponsors if the Innovation Submission is accepted by the Sponsors;
- (iv) a description of the impact, if any, to the construction schedule or a statement confirming that there will be no impact on same; and
- (v) any other factors which the Proponent wishes the Evaluation Committee and the Sponsors to consider when considering the Innovation Submission.

4.2 Proposal Security and Surety's Consent

- (1) In order to ensure that Proponents do not,
 - (a) withdraw their Proposals prior to Financial Close; or
 - (b) if applicable, fail to submit Supplementary Information in accordance with RFP Section 5.1.2,

each Proponent shall submit a proposal security ("Proposal Security") in the form of a bid bond and in the form contained in Schedule 3 of this RFP. The required amount of the Proposal Security is set out in the RFP Data Sheet.

(2) Proponents must also submit a Surety's Consent as set out in Schedule 3 in order to secure the issuance of a performance bond and labour and material payment bond as required by the Project Agreement Documents.

SECTION 5 – SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

5.1 Submission of Proposal

5.1.1 General Submission

(1) Each Proponent shall submit 1 original and 8 copies of its Proposal before either the Submission Deadline or, in the case of Supplementary Information only, before the Supplementary Information Deadline. Each of the original and copies shall be clearly labelled with the name of the Project and the name of the Contact Person and marked as either "Original" or "Copy 1 of 8" etc. For the purposes of this RFP Process, time will be measured by the Infrastructure Ontario reception clock located at the address for submission set out in the RFP Data Sheet. Proposals received after the Submission Deadline (or documents received after the Supplementary Information Deadline, as applicable) shall be returned unopened to the sender. If there is any difference between the original and the copies of the Proposal, the original shall govern.

(2) Proponents shall submit their Proposals and by sending them by pre-paid courier or hand delivery to Infrastructure Ontario at the address set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the Proposal is received by Infrastructure Ontario prior

to the Submission Deadline (or the Supplementary Information Deadline, as applicable) and to ensure it receives a date and time stamp receipt from Infrastructure Ontario confirming the timely delivery of the Proposal.

(3) Each Proponent shall provide both hard copies and an electronic copy of their Proposals on a compact disc(s) in PDF format or Microsoft Word. The Sponsors will not accept Proposals delivered by e- mail or other medium.

(4) If there is any difference whatsoever between the electronic copy of a Proposal and the original, the original of the Proposal, as submitted in hard copy, shall govern.

5.1.2 Two Phased Submission

(1) Respondents shall submit their Proposals in two phases in accordance with RFP Section 4.1.2. Notwithstanding the two phase submission of Proposals, the Proponents' obligations under the RFP exist as of the Submission Deadline and the submission of the first phase of documents. The Proponent is not permitted to withdraw its Proposal after the Submission Deadline, irrespective of whether Supplementary Information is still to be provided in phase 2 of a submission by the Proponent.

(2) For clarity, a Proponent's failure or refusal to submit the Supplementary Information by the Supplementary Information Submission Deadline shall not be used by the Proponent to effectively withdraw a Proposal after the Submission Deadline. Only the Sponsors may, in their sole discretion, determine whether a Proponent's failure to submit the Supplementary Information by the Supplementary Information Submission Deadline will result in the disqualification of the Proponent. Sponsors may, in their sole discretion, waive the requirement to provide the Supplementary Information.

(3) A Proponent's failure to provide the Supplementary Information by the Supplementary Information Submission Deadline shall give rise to a right, on behalf of the Sponsors, to retain and exercise their rights under the Proponent's Proposal Security.

5.2 Withdrawal of Proposals

A Proponent may withdraw its Proposal only by giving written notice before the Submission Deadline to the Contact Person. The Sponsors will return a Proposal that has been withdrawn in accordance with RFP Section 5.2.

5.3 Amendment of Proposal

Proponents may amend their Proposals after submission but only if the Proposal is resubmitted before the Submission Deadline in accordance with the following:

- (a) the Proponent shall withdraw its original Proposal by notifying the Contact Person in writing before the Submission Deadline; and

- (b) the Proponent shall submit a revised replacement Proposal in accordance with the RFP Documents and before the Submission Deadline in accordance with the requirements of RFP Section 5.1.

5.4 Proposal Irrevocability

(1) Subject to the Proponent's right to withdraw a Proposal before the Submission Deadline, the Proposal shall be irrevocable and shall remain in effect and open for acceptance for 120 days after the Submission Deadline (the "Proposal Validity Period").

(2) If the Sponsors wish to extend the Proposal Validity Period, the Sponsors shall submit a request to extend to those Proponents that are still being considered in the evaluation process. 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 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 prior to the expiration of the original Proposal Validity Period, the Sponsors may discontinue the evaluation of a 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 consented to an extension of the Proposal Validity Period.

(3) In respect of the Preferred Proponent, the Sponsors shall be considered to have accepted the Preferred Proponent Proposal prior to the expiration of the Proposal Validity Period if the Signing Parties and the Proponent reach Commercial Close prior to the expiration of the Proposal Validity Period.

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. 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 becomes unable to continue serving on the Evaluation Committee in the middle 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. Whether or not an Evaluation 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 the Sponsors interpretation of the Proposal or any part of the Proposal.
- (2) The Sponsors are not obliged to seek clarification or verification of any aspect of a Proposal or any statement by a 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) In Step 1, the Evaluation Committee 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 or opinion 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 the RFP;

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

(5) 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.

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

6.3.2 Step 2 – Review of the Proposal Submission Form

In Step 2, the Evaluation Committee 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 the 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 Schedule 3 Forms– Evaluation of Schedule and Price Forms Submitted by the Proponent

(1) In Step 3 of the evaluation process, the Sponsors will review and assess the quality and credibility of the proposed schedule and assess which Proposal offers the best value (from a pricing perspective) to the Client.

(2) In Step 3 of the evaluation process, the Sponsors will review, without scoring, any Innovations Submissions submitted by the Proponent. While a Proponent's Innovations Submissions will not be scored by the Sponsors, they may affect whether the Sponsors choose to enter into negotiations in accordance with RFP Section 8.1 and which Proponents the Sponsors choose to enter into negotiations with in accordance with RFP Section 8.1.

6.3.4 Step 4 – Review of the Financing Plan and Key Personnel

(1) In Step 4 of the evaluation process the Evaluation Committee will review the Proponents' Key Personnel Forms and the Proponents Financing Plans to assess whether,

- (a) any additional Key Personnel that were not previously reviewed as part of the RFQ process are acceptable to the Sponsors; and

(b) whether the Financing Plan establishes, to the Sponsors' satisfaction, that the Proponent has the ability to obtain satisfactory financing and achieve Financial Close in a timely fashion.

(2) If the Sponsors, in their sole discretion, reject the credentials of any Key Personnel, they may require the Proponent to replace the proposed individual and failing a successful replacement, may, in their sole discretion, reject the Proponent's Proposal.

(3) If the Sponsors, in their sole discretion, determine that the Proponent is unlikely to obtain satisfactory financing to achieve Financial Close, they may, in their sole discretion, reject the Proponent's Proposal or may require a Proponent to submit additional or alternate financing information.

6.3.5 Step 5 – Establishing a Final Proposal Score

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

Scored Category	Weighting
Schedule Score	10%
Price Score	90%
Final Proposal Score	100%

(2) The score established based on RFP Section 6.3.5(1) shall be the Final Proposal Score.

SECTION 7 – GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

(1) The Sponsors shall determine, in their sole discretion,

(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 Key Personnel who were not named in a Prequalification Submission are acceptable to the Sponsors;

(e) whether the proposed alternatives will or will not be accepted by the Sponsors;

(f) the Final Proposal Score;

- (g) the rankings of the Proposals; 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.

7.1.2 Disqualification

(1) The Sponsors may, in their sole discretion, disqualify 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 Financial Close, 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 Section 3.3.2 or 3.3.3;
- (d) the Proponent fails to comply with the laws of the Province of Ontario or of Canada, as applicable;
- (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;
- (g) if, in the opinion of the Sponsors, acting reasonably, the Proponent, its employees, agents, consultants or representatives directly or indirectly colluded with one or more other Proponents or any of its or their respective employees, agents, consultants or representatives in the preparation or submission of its 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; or
- (i) the Proponent 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.

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) On the identification of the 2 highest ranked Proponents the Sponsors may, in their sole discretion,

- (a) at any time prior to the expiration of the Proposal Validity Period, identify the highest ranked Proponent as the Preferred Proponent based on that Proponent's Final Proposal Score and accept the Proponents' Proposal as submitted, including or excluding its Innovation Submissions;
- (b) identify the 2 highest ranking Proponents as the First Negotiations Proponent (highest ranked) and the Second Negotiations Proponent (second highest ranked) 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 2 highest ranked Proponents (in this case, each a "Negotiations Proponent") and identify a Preferred Proponent as a result of those negotiations.

(2) The Sponsors may use the negotiations process to negotiate any aspect of the Preferred Proponent's or Negotiations Proponent's Proposal or to confirm any amendments to the Project Agreement Documents that are reasonably required to accommodate the Preferred Proponent's or Negotiations Proponent's financing arrangements, or both.

(3) Notwithstanding any negotiations between the Sponsors and the Preferred Proponent and any Negotiations Proponents (including First or Second Negotiations Proponents), the Proposals of all Proponents shall remain valid and irrevocable until the expiration of the Proposal Validity Period.

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

SECTION 9 – PREFERRED PROPONENT

9.1 Preferred Proponent Obligations

(1) Once the Sponsors have identified a Preferred Proponent and notified the Preferred Proponent of such identification, the Preferred Proponent shall execute the Project Agreement Documents, without further substantial amendment, on or before the Commercial Close Target Date or such other earlier or later date as the Preferred Proponent and the Sponsors may agree in writing.

(2) The Preferred Proponent acknowledges and agrees that the entering into of the Project Agreement Documents 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 governmental 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 Innovative Submission in any Proposal;
 - (c) reject the Key Personnel proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
 - (d) reject the Financing Plan contained in a Proposal and thereby reject the Proposal;
 - (e) request a replacement Financing Plan if the Financing Plan contained in the Proposal is, in the opinion of the Sponsors, uncompetitive and/or incomplete and request a re-submission of the Proposal;
 - (f) accept any Proposal;
 - (g) if only one Proposal is received, elect to accept or reject it;
 - (h) 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;
 - (i) alter the Timetable, the RFP Process or any other aspect of this RFP; and
 - (j) cancel this RFP Process and subsequently advertise or call for new submission for the same subject matter of these RFP Documents.

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) 1 Proposal; or
 - (b) only 1 compliant Proposal,

the Sponsors may, in their sole discretion,

- (c) take any action in accordance with RFP Section 10.1(1);
- (d) in respect of the non-compliant Proposal, take any action in accordance with RFP Section 10.2(1); or
- (e) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a 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

The Sponsors shall not be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, or any person connected with any Proponent, as a result of any action taken by the Sponsors in accordance with RFP Sections 10.1 or 10.2.

10.4 Applicable Law, Attornment and Limit on Liability

- (1) This RFP shall be governed and construed in accordance with the Applicable Law as defined in the Project Agreement Documents.
- (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) The Proponent agrees that if the Sponsors commits a material breach of 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.

10.5 Licenses, Permits, etc.

If a Proponent is required by the 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 Documents, neither acceptance of the Proposal nor execution of the Project Agreement Documents 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

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 Financial Close, whichever is first.

(2) Any time after the Preferred Proponent has been identified, the Sponsors, Evaluation Committee and Fairness Monitor will meet with any unsuccessful Proponents, at the request of the unsuccessful Proponent, to provide a de-briefing.

SECTION 12 - DEFINITIONS

12.1 General

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 Documents.

12.2 RFP Definitions

Whenever used in this RFP,

- (1) “Addendum” means a written addendum to the RFP issued by the Sponsors as set out in RFP Section 3.7;
- (2) “Addenda” means more than one Addendum;
- (3) “Advisors” means any person or firm retained to provide professional advice to either the Sponsors or the Proponents;
- (4) “Background Information” means various types of information provided by the Sponsors and is defined in the RFP Section 2.4(1)(b);
- (5) “Client” means the clients listed in the RFP Data Sheet in respect of RFP Section 1.1(1);
- (6) “Commercial Close” means the date the Project Agreement Documents is signed by the Preferred Proponent and the Signing Parties and is defined in RFP Section 1.3(1)(c);
- (7) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);
- (8) “Commercially Confidential Questions” is defined in RFP Section 3.2.2(1)(a)(ii);
- (9) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (10) “Conflict of Interest” is defined in RFP Section 3.9.1;
- (11) “Contact Person” is defined in RFP Section 3.2.1;
- (12) “Contract A” is defined in RFP Section 1.1(7);
- (13) “Data Room” is defined in RFP Section 2.4;
- (14) “Evaluation Committee” is defined in RFP Section 6.1;
- (15) “Fairness Monitor” is defined in the RFP Data Sheet;
- (16) “Financing Letter” is defined in RFP Section 4.1.4(2);
- (17) “Financing Model” is defined in RFP Section 4.1.4(2);
- (18) “Financing Plan” is defined in RFP Section 4.1.4(2);
- (19) “FIPPA” is defined in RFP Section 3.8.1(1);
- (20) “General Questions” is defined in RFP Section 3.2.2(1);

- (21) “Identified Proponent Parties” is defined in RFP Section 3.6.1(1);
- (22) “IPFP Framework” is defined in RFP Section 1.1(3);
- (23) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (24) “Ineligible Persons Affiliate” is defined in RFP Section 3.9.2(1);
- (25) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (26) “Innovations Submissions” is defined in RFP Section 4.1.4(4);
- (27) “Ministry” is defined in the RFP Data Sheet;
- (28) “Negotiations Proponent” is defined in RFP Section 8.1(1)(c);
- (29) “OIPC” is defined in RFP Section 1.1(1);
- (30) “PIR” is defined in RFP Section 1.1(3);
- (31) “Preferred Proponent” is defined in RFP Section 1.1(6);
- (32) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);
- (33) “Prequalification Submission” is defined in RFP Section 1.2(1);
- (34) “Prequalified Parties” is defined in RFP Section 1.2(1);
- (35) “Prequalified Subcontractors” is defined in RFP Section 1.2(3);
- (36) “Project Agreement Documents” include all related Schedules, Appendices and Attachments and are listed in the RFP Data Sheet;
- (37) “Proponent” is defined in RFP Section 1.1(6);
- (38) “Proponents Meeting” is defined in RFP Section 3.4.1;
- (39) “Proponent Representative” is defined in RFP Section 1.2(2);
- (40) “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 and includes all employees of each Proponent team member;
- (41) “Proposals” is defined in RFP Section 1.1(6);
- (42) “Proposal Information” is defined in RFP Section 3.8.4(4) and 3.8.4(5);
- (43) “Proposal Validity Period” is defined in RFP Section 5.4(1);

- (44) “RFI” is defined in RFP Section 3.2.2(1)(a);
- (45) “RFP Documents” is defined in RFP Section 2.1(1);
- (46) “RFP Process” is defined in RFP Section 1.1(7);
- (47) “RFQ” is defined in RFP Section 1.2(1);
- (48) “Scheduled Visits” is defined in RFP Section 3.5.1;
- (49) “Signing Parties” is defined in RFP Section 1.1(5);
- (50) “sole discretion”, wherever used, means the sole and absolute discretion of the party exercising the discretion;
- (51) “Sponsor” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client or Clients;
- (52) “Submission Deadline” is defined in RFP Section 3.1(1);
- (53) “Supplementary Information” is defined in RFP Section 5.1.2(1);
- (54) “Timetable” is defined in RFP Section 3.1(1).