



**Infrastructure
Ontario**



Infrastructure Ontario

PROGRESSIVE DESIGN-BUILD

FOR THE ONTARIO LINE –

PAPE TUNNEL AND UNDERGROUND STATIONS PROJECT

REQUEST FOR PROPOSALS

RFP No. 22-393

(RFP Version 1.0)

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

- (1) This Request for Proposals (“**RFP**”) is issued by Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (“**Infrastructure Ontario**”, also known as “**OILC**” and “**IO**”) in conjunction with the client or clients (referred to collectively as the “**Client**”) named in the RFP Data Sheet. Infrastructure Ontario and the Client are collectively referred to as the “**Sponsors**” for the purposes of this RFP.
- (2) A brief description of the project that is the subject of this RFP (the “**Project**”) is set out in the RFP Data Sheet. A detailed description of the Project is contained in the documentation in the Data Room.
- (3) In this RFP:
 - (a) Prequalified Parties that participate in the RFP Process are referred to as “**Proponents**”, and proposal submissions submitted by Prequalified Parties during the RFP Process, as may be revised by RFP Section 6.3 (*Amendment of Proposal*), are referred to as “**Proposals**”.
 - (b) The Proponent that is selected to enter into the Development and Master Construction Agreement with the Signing Party, after the RFP Process, is referred to as the “**Preferred Proponent**”.
- (4) Except as provided in RFP Section 1.1(4)(a), the procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on DMCA Close (the “**RFP Process**”). Except as provided in RFP Sections 3.8.2 (*Confidentiality Agreements*) and 3.8.3 (*Confidential Information*), and except for the Sponsors’ obligation to pay a Break Fee or a Proposal Fee, all rights and obligations arising out of this RFP terminate either on the cancellation of this RFP Process by the Sponsors, if such cancellation occurs, or
 - (a) for the Preferred Proponent, on DMCA Close provided that DMCA Close is reached prior to the expiration of the Proposal Validity Period; and
 - (b) for the Proponents that are not the Preferred Proponent, on the expiration of the Proposal Validity Period.
- (5) In accordance with RFP Section 11.1(1) (*RFP Not a “Bidding Contract” or a Tender*), nothing in this RFP shall be construed as a bidding contract or tender, and no legal obligations or a contractual relationship (often referred to as “**Contract A/Contract B**”) will be created pursuant to this RFP between the Sponsors and any Proponent.
- (6) Infrastructure Ontario will manage the RFP Process on behalf of the Sponsors, and will be the single point of contact for Proponents on behalf of the Sponsors. Proponents shall contact Infrastructure Ontario only through the Contact Person as set out in RFP Section 3.2.1 (*Contact Person*), unless otherwise directed in writing by the Sponsors.

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- (7) The Project to which this RFP applies has been approved by the Ministry of Infrastructure (“MOI”) to proceed as a progressive design-build project. The Project shall follow five fundamental principles for the procurement of public infrastructure, which include:
- (a) the public interest is paramount;
 - (b) value for the investment of public money must be demonstrated;
 - (c) appropriate public control and ownership must be maintained;
 - (d) accountability must be maintained; and
 - (e) fair, transparent and efficient processes must be used.
- (8) While Infrastructure Ontario will manage the procurement process in respect of the Project, the Preferred Proponent (as Project Co), subject to the requirements and conditions of the RFP Documents, will enter into the Development and Master Construction Agreement with the party named as the signing party or parties in the RFP Data Sheet (the “**Signing Party**”). Unless listed as a Signing Party to the Development and Master Construction Agreement in the RFP Data Sheet, neither Infrastructure Ontario, nor the Government of Ontario will be parties to the Development and Master Construction Agreement.
- (9) The Project is one of the components which will constitute the Ontario Line Subway. The Project will be integrated with the RSSOM Project and the South Civil Project, and will integrate the Elevated Guideway and Stations Project and the Early Works Infrastructure with the Project Co Infrastructure, which collectively will form the Ontario Line Subway System. It is a requirement of this procurement that the Project Co Infrastructure integrate seamlessly with the other components of the Ontario Line Subway.

1.2 Prequalified Parties and Proponent Representatives

- (1) Subject to RFP Section 3.6 (*Changes to Proponents and Proponent Team Members and Key Individuals*), only those parties that were prequalified through the Project’s Request for Qualifications (“**RFQ**”) process that preceded this RFP are eligible to participate in the RFP Process. The prequalified parties are listed in the RFP Data Sheet (“**Prequalified Parties**”). The prequalification documents submitted by each of the Prequalified Parties in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Prequalified Party’s “**Prequalification Submission**”.
- (2) All correspondence from the Sponsors to a Proponent will be sent to the person identified, in the Proponent’s Prequalification Submission, to receive information and notices on behalf of the Prequalified Party (the “**Proponent Representative**”). Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

1.3 Overview of the Stages of Project Procurement and Implementation

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

(a) **Stage 1 – Prequalification Stage**

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

(b) **Stage 2 – RFP Process**

(i) The RFP Process is intended to result in the identification of the Preferred Proponent by way of a competitive procurement. The RFP Process will include:

(A) the Proponents’ participation in Consultation Sessions; and

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

(c) **Stage 3 – Implementation of the Development and Master Construction Agreement**

Once the Signing Party and the Preferred Proponent have executed the Development and Master Construction Agreement, then the terms and conditions of the Development and Master Construction Agreement shall determine how the Project is to proceed.

1.4 Signatories to Development and Master Construction Agreement

(1) Subject to any restrictions set out in the RFP Data Sheet, the Preferred Proponent will (as Project Co) execute the Development and Master Construction Agreement with the Signing Party in accordance with this RFP.

1.5 Fairness Monitor

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

2 THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

(1) The RFP documents (the “**RFP Documents**”) are:

(a) this RFP;

(b) Schedule 1 – RFP Data Sheet;

(c) Schedule 2 – Proponent Consultation Process;

(d) Schedule 3 – Proposal Submission Requirements and Evaluation Criteria, consisting of:

(i) Part 1 – Proposal Submission Requirements;

- (ii) Part 2 – Proposal Format and Evaluation;
 - (e) Schedule 4 – Proposal Submission Form;
 - (f) Schedule 5 – Participant Conflict Screening List;
 - (g) Schedule 6 – Proponent Team Member Declaration;
 - (h) Schedule 7A – Certificate of Officer;
 - (i) Schedule 7B – Form of Accounting Firm Letter;
 - (j) Schedule 8 – Form of Draft Development and Master Construction Agreement (including all related Schedules appendices and attachments) as listed in the RFP Data Sheet;
 - (k) Schedule 9 – Form of Assignment of Project Documents;
 - (l) Schedule 10 – DMCA Completion Documents; and
 - (m) Addenda to the RFP Documents, if any.
- (2) Subject to RFP Section 2.2(1) (*Conflicts During the RFP Process*), the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, Background Information documents are not RFP Documents.

2.2 Conflicts or Inconsistencies in Documents

(1) Conflicts During the RFP Process

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

- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, this RFP shall prevail over the Schedules to this RFP during the RFP Process;
 - (b) in respect of all matters of interpretation of the Project or the Draft Development and Master Construction Agreement during the RFP Process, the Draft Development and Master Construction Agreement shall prevail over this RFP and all other Schedules to this RFP; and
 - (c) for the purpose of resolving conflicts or inconsistencies among any of the documents that constitute the Draft Development and Master Construction Agreement, the provisions of the Draft Development and Master Construction Agreement dealing with conflicts or inconsistencies shall govern.
- (2) Despite RFP Section 2.2(1) (*Conflicts During the RFP Process*), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the

Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.2 (*Clarification/RFI Submission Process*) and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of RFIs.

- (3) If there is a conflict or inconsistency between:
 - (a) the Sponsors' electronic version of an RFP Document as contained in the Data Room; and
 - (b) any other version of the same RFP Document (whether in electronic or hard copy),the Sponsors' electronic version as contained in the Data Room shall govern.
- (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 or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP Section 2.2(5), the date of each RFP Document shall be determined by the date and time when that document was placed in the Data Room by Infrastructure Ontario.

2.3 Distribution of Documents to Proponents

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

2.4 Data Room

- (1) The Sponsors have established an electronic data room (the "**Data Room**") at a secure website address for:

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- (a) the distribution of RFP Documents and Addenda (including “black-lined” RFP Documents revised by Addenda);
 - (b) the provision of various types of background information for the Proponents’ review (“**Background Information**”); and
 - (c) the receipt of RFIs from Proponents and the posting of responses to RFIs.
- (2) The Data Room will be accessible on approximately the date set out in the Timetable. The Sponsors may add, delete or amend documents in the Data Room at any time.
 - (3) Each Proponent is solely responsible to ensure that it:
 - (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to the Data Room and receipt of a Data Room password;
 - (b) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from the Data Room; and
 - (c) checks the Data Room frequently for the addition, deletion or amendment of RFP Documents, Background Information and the posting of responses to RFIs and, at all times during the RFP Process keeps itself informed of and takes into account the most current RFP Documents, Background Information and responses to RFIs.

2.5 Proponent Investigations

- (1) Each Proponent and each of its Proponent Team Members is solely responsible, at its own cost and expense, to carry out its own independent research and due diligence and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project, including the Draft Development and Master Construction Agreement, as required by each Proponent to complete its respective Proposal. The Proponents’ and Proponent Team Members’ obligations set out in this RFP Section 2.5 apply irrespective of any Background Information in the Data Room or information contained in the RFP Documents or in responses to RFIs. The Proponents’ and Proponent Team Members’ obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the Sponsors is more particularly set out in the Draft Development and Master Construction Agreement.
- (2) The Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents or Proponent Team Members in the Data Room as Background Information or of any other background or reference information or documents prepared by the Government of Ontario or by third parties and which may be made available to Proponents or Proponent Team Members by or through the Sponsors. Proponents and Proponent Team Members shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information and any use of or reliance by Proponents or Proponent Team Members on any and all such information shall be at the Proponents’ and Proponent Team Members’ sole risk and without recourse against the Sponsors or the Government of Ontario. Each Proponent and Proponent Team Member is responsible for forming its own independent judgments, interpretations, conclusions and deductions about any and

all such information, and should examine all information relevant to the risks, contingencies and other circumstances that could affect their Proposal.

2.6 Project Affordability Constraints

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

3 THE RFP PROCESS

3.1 RFP Process Timetable

- (1) The general timetable for the RFP Process (the “**Timetable**”) is set out in the RFP Data Sheet.
- (2) The Sponsors may amend the Timetable in their sole discretion:
 - (a) at any time prior to the Proposal Submission Deadline for events that are to occur prior to or on the Proposal Submission Deadline, as applicable, including the Proposal Submission Deadline itself; and
 - (b) at any time in the RFP Process for events that are to occur after the Proposal Submission Deadline.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

- (1) Except as set out in RFP Section 3.4.2 (*Commercially Confidential Proponent Meetings*) or as otherwise directed in writing by the Sponsors, the Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process and their Proposals to the contact person or contact persons named in the RFP Data Sheet (the “**Contact Person**” or “**Contact Persons**”, as applicable) electronically at the coordinates listed in the RFP Data Sheet and the questions shall be submitted in accordance with RFP Section 3.2.2 (*Clarification/RFI Submission Process*) and in the form provided in the Data Room.

3.2.2 Clarification/RFI Submission Process

- (1) In addition to the requirement set out in RFP Section 3.2.1 (*Contact Person*), the following rules shall apply to Proponents when submitting questions or requests for information (“**RFIs**”) to the Sponsors during the RFP Process:
 - (a) Proponents are permitted to submit RFIs categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Proponents (“**General RFIs**”); and
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”);

- (b) if the Sponsors disagree with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsors will give the Proponent an opportunity to either resubmit the RFI as a General RFI or to withdraw the RFI;
 - (c) if the Sponsors determine, in their sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the Sponsors may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; and
 - (d) if the Sponsors agree with the Proponent’s categorization of a Commercially Confidential RFI, then the Sponsors will provide a response to that RFI to only the Proponent that submitted the RFI.
- (2) Responses to RFIs prepared and circulated by the Sponsors are not RFP Documents and do not amend the RFP Documents. If, in the Sponsors’ sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.7 (*Addenda/Changes to the RFP Documents*). Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.
- (3) During the RFP Process, Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.
- (4) During the RFP Process, Proponents shall submit all RFIs electronically to the Contact Person in accordance with the instructions set out in the RFP Data Sheet.
- (5) The Sponsors will respond to RFIs in written responses circulated to Proponents in accordance with the schedule set out in the Timetable. The Sponsors may, in their sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.
- (6) It is the Proponent’s obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with this RFP Section 3.2.2 (*Clarification/RFI Submission Process*) and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. Neither the Sponsors nor the Government of Ontario are responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by the Sponsors or the Government of Ontario.

3.2.3 RFP Documents Comments

- (1) During the RFP Process, the Sponsors may, in their sole discretion, request that Proponents submit comments on the RFP Documents and, in particular, comments on the Draft Development and Master Construction Agreement. Whether the Sponsors intend to permit or require the submission of such comments and the schedule and format for the submission of those comments is set out in the RFP Data Sheet. The Sponsors are not obliged to respond to all or any part of any comment made by a Proponent pursuant to this RFP Section 3.2.3 (*RFP Documents Comments*). If the

Sponsors accept a comment, or part of a comment, and that acceptance requires a change to the RFP Documents, the Sponsors shall implement that change by Addendum.

3.3 Communications Restrictions

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

- (1) Subject to the restrictions in RFP Section 3.3.2 (*Prohibited Contacts and Lobbying Prohibition*) and any special rules set out in the RFP Data Sheet, Proponents, Proponent Team Members and their respective Advisors, employees or representatives are permitted to communicate directly with any municipality, government authority or utility with respect to municipal, utility or other types of governmental requirements related to the Project. Under no circumstances will any special rules set out in the RFP Data Sheet in accordance with this RFP Section 3.3.1(1) override the provisions of RFP Section 3.3.2 (*Prohibited Contacts and Lobbying Prohibition*).
- (2) Neither the Sponsors nor the Government of Ontario are, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors, employees or representatives receive or believe they may have received from a municipality, a government authority, a utility or any other person. Proponents, Proponent Team Members and their respective Advisors, employees or representatives rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors or the Government of Ontario.

3.3.2 Prohibited Contacts and Lobbying Prohibition

- (1) Proponents and Proponent Team Members and all of their respective Advisors, employees and representatives are prohibited from engaging in any form of political or other lobbying, of any kind whatsoever, to influence the outcome of the RFP Process, including the Draft Development and Master Construction Agreement.
- (2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents 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) MOI, MTO or any other ministry, agency or entity listed in the RFP Data Sheet;
or
 - (iii) the Premier of Ontario's office or the Ontario Cabinet office;

- (d) any member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
 - (e) any directors, officers or consultants of any entity listed in RFP Sections 3.3.2(2)(a) to 3.3.2(2)(d),
- (collectively, the “**Prohibited Contacts**”).
- (3) If a Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives, in the opinion of the Sponsors, contravenes RFP Sections 3.3.1(1), 3.3.2(1) or 3.3.2(2), the Sponsors may, in their sole discretion,
- (a) take any action in accordance with RFP Section 8.2 (*Disqualification*); or
 - (b) impose conditions on the Proponent’s or Proponent Team Member’s continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

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

3.3.3 Media Releases, Public Disclosures and Public Announcements

- (1) A Proponent shall not, and shall ensure that its Advisors, employees, representatives and Proponent Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents, the Development and Master Construction Agreement or the Project or any matters related thereto, without the prior written consent of the Sponsors, which consent may be withheld in the Sponsors’ sole discretion.
- (2) Neither the Proponents or the Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent, another Proposal, or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsors’ prior written consent, which consent may be withheld in the Sponsors’ sole discretion. Notwithstanding this RFP Section 3.3.3(2), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.
- (3) RFP Section 3.3.3(2) does not prohibit any disclosures necessary to permit, with regards to all Proponents, the Proponent to discuss the Project with prospective Subcontractors but such disclosure is permitted only to the extent necessary to solicit those Subcontractors’ participation in the Project.

3.3.4 Restrictions on Communications between Proponents – No Collusion

- (1) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding either (a) the preparation of its own Proposal, or (b) the Proposal of any other Proponent, in a fashion that would contravene Applicable Law. 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 greater clarity, RFP Section 3.3.4(1) applies to Proponents and Proponent Team Members and their respective Advisors, employees and representatives.

3.4 Meetings with Proponents

3.4.1 General Proponents' Meeting(s)

- (1) The Sponsors may, in their sole discretion, convene general Proponents' meetings (each, a "**Proponents' Meeting**") on the dates and at the times set out in the Timetable and at the location and for the purposes set out in the RFP Data Sheet. While attendance at a Proponents' Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Proponents' Meeting is at the Proponent's sole risk and responsibility.
- (2) The Sponsors shall communicate locations and particulars with respect to Proponents' Meetings to the Proponents in advance. All meetings shall be held in the Greater Toronto Area, Ontario (or by video-conference) as specified in the RFP Data Sheet. The Sponsors reserve the rights, in their sole discretion, to limit the number of Proponent attendees that may attend any Proponents' Meeting. The Sponsors shall notify the Proponents in advance in the event any such limitation is to be imposed.
- (3) Proponents may ask questions and seek clarifications at a Proponents' Meeting. Notwithstanding that the Sponsors may give oral answers at a Proponents' Meeting, those answers shall not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2.2 (*Clarification/RFI Submission Process*) for response in accordance with RFP Section 3.2.2 (*Clarification/RFI Submission Process*).
- (4) No statement, consent, waiver, acceptance, approval or anything else said or done in any Proponents' Meeting by the Sponsors or any of their respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7 (*Addenda/Changes to the RFP Documents*).

3.4.2 Commercially Confidential Proponent Meetings

- (1) During the RFP Process, the Sponsors may, in their sole discretion, convene commercially confidential meetings with individual Proponents ("**Commercially Confidential Meetings**"), which may include the Consultation Sessions described in Schedule 2 – Proponent Consultation Process to this RFP and additional Commercially Confidential Meetings between the Sponsors (and their representatives and Advisors) and individual Proponents (and their representatives and Advisors) to discuss other matters related to the RFP Process, the Draft Development and Master Construction Agreement or the Proponents' Proposals.
- (2) Whether the Sponsors intend to hold Commercially Confidential Meetings and the location of those meetings is set out in Schedule 2 – Proponent Consultation Process to this RFP and in the RFP Data Sheet. The approximate date and time of Commercially Confidential Meetings is described in the Timetable. While attendance at Commercially Confidential Meetings by Proponents is not

mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Commercially Confidential Meeting is at the Proponent's sole risk and responsibility.

- (3) If the Sponsors hold Commercially Confidential Meetings, the Fairness Monitor may be present during some or all of those meetings.
- (4) No oral or written statement, consent, waiver, acceptance, approval or anything else said or done by the Sponsors or any of their respective Advisors, employees or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 – Proponent Consultation Process to this RFP shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7 (*Addenda/Changes to the RFP Documents*).
- (5) The Proponent, its Proponent Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:
 - (a) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 - Proponent Consultation Process to this RFP is not and shall not be deemed or considered to be an indication of a preference by the Sponsors or the Government of Ontario or a rejection by the Sponsors or the Government of Ontario of anything said or done by the Proponent, Proponent Team Member or any of their respective Advisors or representatives;
 - (b) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 – Proponent Consultation Process to this RFP shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Development and Master Construction Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7 (*Addenda/Changes to the RFP Documents*) provided that the Sponsors shall not be under any obligation to confirm any information by Addendum;
 - (c) the Sponsors may share process-related information, including clarifying information, with all Proponents if the need arises; and
 - (d) the Proponent, its Proponent Team Members and their respective Advisors and representatives:
 - (i) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the RFP;
 - (ii) waive any and all rights to contest and/or protest the RFP Process, the RFP Documents or the rules with respect to Commercially Confidential Meetings, including the Commercially Confidential Meetings themselves, based on the fact that such Commercially Confidential Meetings occurred or on the basis that

information may have been received during a Commercially Confidential Meeting by another Proponent, another Proponent's Proponent Team Member, or their respective Advisors or representatives that was not received by the Proponent, its own Proponent Team Member(s) or any of their respective Advisors or representatives; and

- (iii) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

3.5 Visiting the Lands

3.5.1 Scheduled Visits

- (1) If, in the RFP Data Sheet, the Sponsors have established scheduled dates and times for visits to see the Lands or the Site for all Proponents, Proponent Team Members and their respective representatives and Advisors during the RFP Process (“**Scheduled Visits**”), the dates and times of the Scheduled Visits will be set out in the Timetable.
- (2) The following shall apply to any Scheduled Visits:
 - (a) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the Sponsors' representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
 - (b) all Proponent and Proponent Team Member representatives shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying, residing or working in close proximity to any part of the Site or the Lands which are not accessible by the general public, as applicable;
 - (c) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the Site or the Lands which are not accessible by the general public, as applicable, to which the Proponent has been granted access in the Contact Person's confirmation;
 - (d) the Proponent and Proponent Team Member representatives shall not take photographs without the prior written consent of the Contact Person. If photographs are permitted by the Contact Person, they may be taken by the Proponent and Proponent Team Member representatives only in the specific areas of the Site or the Lands which are not accessible by the general public, for which consent to photograph has been given; and
 - (e) the Proponent shall comply with any supplementary rules set out in the RFP Data Sheet for Scheduled Visits.
- (3) Any statement made by Infrastructure Ontario, the Client or any of their respective Advisors or representatives during any Scheduled Visit to the Site or the Lands, if any, shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Development and Master Construction Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7 (*Addenda/Changes*)

to the RFP Documents) provided that neither Infrastructure Ontario nor the Client shall be under any obligation to confirm any information by Addendum.

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

3.5.2 Ownership of the Metrolinx Lands

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

3.6 Changes to Proponents, Proponent Team Members and Key Individuals

3.6.1 Change to Identified Proponent Parties

- (1) During the RFP Process, Proponents shall not change their shareholders, Proponent Team Members, proposed subcontractors, Key Individuals or other parties identified in the Proponents' Prequalification Submissions (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors. Notwithstanding the foregoing, no consent from the Sponsors shall be required with respect to a change in a Proponent's shareholders where the person acquiring the ownership interest is not a Restricted Person and:
 - (a) the Proponent is a company whose equity securities are listed on a recognized stock exchange; or
 - (b) there is a change in a Proponent's shareholdings owned by an employee of such Proponent, unless such changes individually or in the aggregate determined since the date of the Proponents' Prequalification Submissions, would result in a Change in Control of the Proponent.
- (2) Without limiting the generality of the foregoing, Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section 3.6 (*Changes to Proponents and Proponent Team Members and Key Individuals*).
- (3) No later than the deadline set out in the Timetable, a Proponent may request a change in its Identified Proponent Parties, including any proposed withdrawal from, addition to, or substitution of the Identified Proponent Parties (each, a "**Proposed Change in Identified Proponent Party**") by delivering a request notice to the Contact Person, requesting the Sponsors' consent to such Proposed Change in Identified Proponent Party.
- (4) If an Identified Proponent Party withdraws from the RFP Process in a manner that does not make it possible for the Proponent to deliver the request notice in advance of obtaining the Sponsors' consent, the Proponent shall notify the Sponsors of the withdrawal as soon as the Proponent becomes aware of the withdrawal and shall deliver a request notice to the Contact Person,

requesting the Sponsors' consent to a Proposed Change in Identified Proponent Party, either by substituting or proceeding without any substitute of the withdrawn Identified Proponent Party, such request notice to be delivered no later than six weeks after the occurrence of the date of withdrawal or 21 days before the Proposal Submission Deadline, whichever is earlier.

- (5) A request notice delivered under either RFP Sections 3.6.1(3) or 3.6.1(4), as applicable, shall:
- (a) clearly identify the Proposed Change in Identified Proponent Party (including, as applicable, a statement of the Proponent's intention to continue in the absence of a withdrawn Identified Proponent Party, or any proposed additional or substitute Identified Proponent Party);
 - (b) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors, in their sole discretion, that the Proposed Change in Identified Proponent Party will not materially adversely affect the Proponent's ability to submit a complete and compliant Proposal or impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Development and Master Construction Agreement; and
 - (c) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors, in their sole discretion, that the reconstituted Proponent team (whether through addition, substitution or continuation without replacement of a withdrawal of one or more of the Identified Proponent Parties, as applicable) would have met or exceeded any applicable criteria applied during the RFQ process.
- (6) In reviewing a request made in accordance with RFP Section 3.6.1(5) the Sponsors may, in their sole discretion and at any time, instruct the Proponent to deliver further documentation or additional information as may be reasonably requested by the Sponsors to assess any Proposed Change in Identified Proponent Party. When a request for further documentation or additional information is made by the Sponsors, the Proponent shall deliver such information and documentation as soon as possible and in any event no later than the deadlines set out in RFP Section 3.6.1(3) or RFP Section 3.6.1(4), as applicable. The Sponsors are under no obligation to consider any further documentation or additional information delivered after the applicable deadline.
- (7) With respect to any request for a Proposed Change in Identified Proponent Party, the Sponsors may, in their sole discretion, do any one or more of the following, as applicable:
- (a) consent to or reject the Proposed Change in Identified Proponent Party;
 - (b) impose such other terms and conditions as the Sponsors may require in connection with any consent to a Proposed Change in Identified Proponent Party; and/or
 - (c) following a rejection of a Proposed Change in Identified Proponent Party (where such Proposed Change in Identified Proponent Party involves a substitution of an Identified Proponent Party), permit the Proponent to deliver a further request notice for a Proposed Change in Identified Proponent Party identifying an alternate substitute for review by the Sponsors, subject to the same deadlines, terms and conditions and standard of review as set out in this RFP Section 3.6 (*Changes to Proponents and Proponent Team Members and Key Individuals*).

- (8) The Sponsors may, at any time during the RFP Process and in their sole discretion, disqualify a Proponent and terminate a Proponent's continued involvement in the RFP Process or allow a Proponent to continue under such terms and conditions as the Sponsors may require, in their sole discretion, in the event of any of the following:
- (a) an actual change in any Identified Proponent Party is made at any time during the RFP Process by the Proponent without obtaining prior consent of the Sponsors (including any withdrawal of an Identified Proponent Party described in RFP Section 3.6.1(4));
 - (b) a request for a change in any Identified Proponent Party is made after the deadlines set out in RFP Section 3.6.1(3) or RFP Section 3.6.1(4), as applicable; or
 - (c) a change in circumstances with respect to a Proponent after the Proposal Submission Deadline that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Development and Master Construction Agreement.
- (9) If, after identification of the Preferred Proponent pursuant to RFP Section 10.1 (*Identification of Preferred Proponent*), the Sponsors determine, acting reasonably, that it is in the best interests of the Sponsors that any individual proposed as a Key Individual in the Preferred Proponent's Proposal be substituted, the Sponsors shall notify the Preferred Proponent (including a detailed explanation of the reasons for such determination), and, within 10 days following receipt by the Preferred Proponent of such notice, the Preferred Proponent shall provide the Sponsors with relevant information on the proposed substitution and shall consult with the Sponsors before finalizing the appointment of such substitution. The proposed substitution must have equal or better qualifications than the qualifications of the Key Individual that they are replacing. Any proposed substitution of the Key Individuals listed in Section 5.1(c) of Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP may be required to participate in the Collaborative and Behavioural Assessment.

3.6.2 Change in Control

- (1) If, at any time during the RFP Process, and notwithstanding any other provision in this RFP, there is a Change in Control of a Proponent or of one of its Proponent Team Members (the “**Acquiree**”) by one of the other Proponents or one of the other Proponent's Proponent Team Members (the “**Acquirer**”):
- (a) the Acquiree shall be immediately disqualified from further participation in this RFP Process. In the event that a Proponent Team Member is the Acquiree, the affected Proponent may request a change of the Acquiree and the Sponsors shall consider such request, in their sole discretion, in accordance with this RFP Section 3.6 (*Changes to Proponents and Proponent Team Members and Key Individuals*). In the event that such request to change the Proponent Team Member is rejected by the Sponsors, the Sponsors shall disqualify the Proponent from continuing in the RFP Process; and
 - (b) the Sponsors may, in their sole discretion, allow the Acquirer to continue in the RFP Process, however, the Sponsors' consent to continue may be subject to such terms and conditions as the Sponsors may require.

3.7 Addenda/Changes to the RFP Documents

- (1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents at any time during the RFP Process. The Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors or the Sponsors' Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents.
- (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) Subject to RFP Section 3.7(2), the Sponsors shall issue Addenda by placing them in the Data Room and notifying the Proponent Representatives by e-mail that an Addendum has been placed in the Data Room.
- (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 this RFP Section 3.7 (*Addenda/Changes to the RFP Documents*).

3.8 Freedom of Information, Confidentiality and Copyright Matters

3.8.1 Freedom of Information and Protection of Privacy Acts

- (1) Proponents are advised,
 - (a) that the Sponsors may be required to disclose the RFP Documents or a part or parts of any Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time (“**FIPPA**”); and
 - (b) the applicable owners of any New Third Party Infrastructure may be required to disclose a part or parts of any Proposal pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time (“**MFIPPA**”).
- (2) Proponents are also advised that FIPPA does provide protection for confidential and proprietary business information. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals or other submissions under this RFP.
- (3) Subject to the provisions of FIPPA, the Sponsors will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under Applicable Law.

3.8.2 Confidentiality Agreements

- (1) Each Prequalified Party has executed a submission form to the RFQ that states that they agree to be bound by the confidentiality provisions set out in the RFQ. If the Sponsors, in their sole discretion, require a separate confidentiality agreement from Proponents, no later than five days

after a request by the Sponsors, the Proponent shall cause each of its employees, representatives and Advisors and its Proponent Team Members and each of their employees, representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the Sponsors a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the Sponsors, in their sole discretion. To the extent that the provisions of the confidentiality agreements are inconsistent or conflict with the requirements of RFP Section 3.8.3 (*Confidential Information*), the more stringent confidentiality obligation shall govern.

3.8.3 Confidential Information

- (1) For the purpose of this RFP Process, “**Confidential Information**” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the Sponsors or the Government of Ontario in connection with the RFP Process, the RFP Documents or the Project, whether supplied, obtained from or provided before or after the RFP Process.
- (2) The Proponent agrees that all Confidential Information:
 - (a) shall remain the sole property of the Sponsors or the Government of Ontario, as applicable, and the Proponent shall treat it as confidential;
 - (b) shall not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Signing Party;
 - (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent’s preparation of its Proposal without prior written consent of the Sponsors or the Government of Ontario, as applicable;
 - (d) shall not be used in any way detrimental to the Sponsors or the Government of Ontario; and
 - (e) if requested by the Sponsors, all Confidential Information shall be returned by the Proponents to the Sponsors no later than 10 calendar days after that request.
- (3) Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8.3 (*Confidential Information*) by any person to whom it discloses the Confidential Information, including, for greater clarity, the Proponent’s employees, representatives and Advisors and the Proponent Team Members and their employees, representatives and Advisors. Each Proponent shall indemnify each of the Sponsors and the Government of Ontario and each of their related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.8.3 (*Confidential Information*) by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the Sponsors act as trustee for each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or the Government

of Ontario or any of their respective directors, officers, consultants, employees, agents or representatives and that the Sponsors have agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives.

- (4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8.3 (*Confidential Information*) would cause the Sponsors, the Government of Ontario and their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors, the Government of Ontario and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8.3 (*Confidential Information*) upon application to a court of competent jurisdiction without proof of actual damage to the Sponsors, the Government of Ontario or any of their related entities.
- (5) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.8.3 (*Confidential Information*) shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit a Proposal.
- (6) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:
 - (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
 - (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the Sponsors, and provided that it was not acquired by the Proponent under an obligation of confidence; or
 - (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of confidence with respect to such information.
- (7) Notwithstanding any other provision of the RFP that restricts the use or disclosure of information, Sponsors may disclose any Confidential Information of the Proponent to any third party who has entered into a non-disclosure agreement with the Sponsors with respect to this Project.

3.8.4 Copyright and Use of Information in Proposals

- (1) The Sponsors' rights, as set out in this RFP Section 3.8.4 (*Copyright and Use of Information in Proposals*), to the Proposal and all Proposal Information submitted by the Proponent during the RFP Process shall be granted to the Sponsors as follows:
 - (a) if a Proposal Fee is offered in accordance with RFP Section 11.4.2 (*Proposal Fee*):
 - (i) for unsuccessful Proponents, upon payment of the Proposal Fee; and
 - (ii) for the Preferred Proponent, upon DMCA Close; or

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- (b) if the RFP Process is cancelled and a Break Fee is offered in accordance with RFP Section 11.4.3 (*Break Fee*), upon payment of the Break Fee; or
- (c) if RFP Sections 3.8.4(1)(a) or 3.8.4(1)(b) do not apply, upon submission of the Proposal.
- (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 licencing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Project.
- (3) All requirements, designs, documents, plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the property of the Sponsors. Upon request of the Sponsors, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the Sponsors.
- (4) The Proponent and each Proponent Team Member, by their participation in the RFP Process, hereby grants to each of, the Sponsors and His Majesty The King in right of Ontario a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the Proposal Information (the “**Proposal Information Licence**”). Without limiting the foregoing, the Proposal Information Licence shall include the right to modify the Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except Project Co (as defined in the Development and Master Construction Agreement) in relation to this Project, be liable to the Sponsors, His Majesty The King in right of Ontario or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.
- (5) For the purpose of this RFP Section 3.8.4 (*Copyright and Use of Information in Proposals*), “**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 (including during any Proponent Interview or Collaborative and Behavioural Assessments) or during the process of executing the Development and Master Construction Agreement; and
- (b) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the Collaborative and Behavioural Assessments, the preparation, submission, review or negotiation of any Proposal or the Development and Master Construction Agreement.
- (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 Infrastructure Ontario, the Client and His Majesty The King in right of Ontario the rights set out in this RFP Section 3.8.4 (*Copyright and Use of Information in Proposals*). It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the Sponsors, or His Majesty The King in right of Ontario 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 Infrastructure Ontario, the Client, His Majesty The King in right of

Ontario and each of their respective Advisors, and that the provisions of this RFP Section 3.8.4 (*Copyright and Use of Information in Proposals*) shall take precedence and govern.

3.8.5 Digital and Data Directive

- (1) Proponents acknowledge that the RFP Documents, the Development and Master Construction Agreement and any part or parts of any Proposals and any other submissions from the Proponents during this RFP Process are subject to the Digital and Data Directive and that Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Digital and Data Directive.

3.9 Conflict of Interest and Ineligible Persons

3.9.1 Conflict of Interest

- (1) Proponents and Proponent Team Members and each of their Advisors shall disclose, in their Proposal Submission Forms and the Proponent Team Member Declaration (in respect of Proponent Team Members), all perceived, potential and actual Conflicts of Interest. For clarity, Proponents have an ongoing obligation to comply with this RFP Section 3.9.1 (*Conflict of Interest*).
- (2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of its Proposal discovers any perceived, potential or actual Conflict of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.
- (3) At the request of the Sponsors, the Proponent shall provide the Sponsors with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent shall submit any additional information to the Sponsors that the Sponsors consider necessary to properly assess the perceived, potential or actual Conflict of Interest.
- (4) The Sponsors may, in their sole discretion, exclude any Proponent Team Member or Proponent Advisor on the grounds of a Conflict of Interest.
- (5) Without limiting the generality of RFP Sections 3.9.1(4) or 3.9.1(6), the Sponsors may, in their sole discretion, require the Proponent, Proponent Team Member or a Proponent's Advisor to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.
- (6) The Sponsors may, in their sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of Proponents or Proponent Team Members, or any of their respective Advisors. A waiver may be upon such terms and conditions as the Sponsors, in their sole discretion, require to satisfy themselves that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the Sponsors, in their sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
- (7) For the purposes of this RFP Process "**Conflict of Interest**" includes any situation or circumstance where a Proponent, any Proponent Team Member, any Proponent Advisor or any of the employees of a Proponent, Proponent Team Member or Proponent Advisor engaged in the development or

oversight of development of the Proposal (including for such employees in their personal capacities):

- (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsors or their Advisors;
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the Development and Master Construction Agreement if that Proponent was determined to be the Preferred Proponent under the RFP Process; or
 - (b) has contractual or other obligations to any of the Sponsors that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process or the Project; or
 - (c) has knowledge of confidential information (other than Confidential Information) that
 - (i) has been made available to the Proponent, any Proponent Team Member or any Proponent Advisor by the Client, Infrastructure Ontario, MTO or any municipality;
 - (ii) is of strategic and/or material relevance to the RFP Process or to the Project; and
 - (iii) is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.
- (8) The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Sponsors in their sole discretion.

3.9.2 Ineligible Persons

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

consent from the Sponsors permitting it to participate as a Proponent Team Member, or Advisor to the Proponent or to a Proponent Team Member. To obtain consent for an Ineligible Person's Affiliate to participate as a Proponent Team Member, or Advisor to the Proponent or to a Proponent Team Member, the Proponent must submit a request for consent to the Contact Person that includes the following information:

- (a) the full legal name of the Ineligible Person's Affiliate that the Proponent wishes to include on its team or as a Proponent Team Member or Advisor to the Proponent or to a Proponent Team Member;
 - (b) information regarding the Ineligible Person's Affiliate's relationship to the Ineligible Person listed in the RFP Data Sheet; and
 - (c) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any perceived, potential or actual Conflict of Interest with respect to the Ineligible Person's Affiliate.
- (4) Upon the Contact Person's receipt of a Proponent's properly completed request for consent in accordance with RFP Section 3.9.2(3), the Sponsors shall, in their sole discretion, make a determination as to whether they consider there to be a perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsors' decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person's Affiliate is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsors shall add the Ineligible Person's Affiliate to the Ineligible Persons list by Addendum.

3.9.3 Conflict of Interest Screening List

- (1) Proponents shall deliver to the Contact Person, no later than the deadline set out in the Timetable, the list of Identified Proponent Parties and other significant individuals having involvement in the preparation and/or oversight of the preparation of the Proposal in the form prescribed by Schedule 5 – Proposal Participant Conflict Screening List to this RFP, which list shall be used by the Sponsors in their assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Proponent, Identified Proponent Party or any employee or Advisor of the Sponsors in respect of the Project.

3.10 Proponent Costs

- (1) The Proponent and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proponent's involvement in:
 - (a) the preparation, presentation and submission of their Proposals;
 - (b) attendance at any Proponents' Meeting, Commercially Confidential Meeting, Collaborative and Behavioural Assessment or any other meeting, interview (including any Proponent Interview) or consultation session with the Sponsors;

- (c) due diligence and information gathering processes;
 - (d) any Scheduled Visits;
 - (e) preparation of responses to questions or requests for information from the Sponsors;
 - (f) preparation of the Proponent’s own RFIs during the clarification process;
 - (g) negotiations; and
 - (h) achieving DMCA Close.
- (2) Except as explicitly provided in RFP Section 11.4.2 (*Proposal Fee*), if applicable, the Sponsors are not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

- (1) During the RFP Process, the Proponent is required to obtain, and to cause all Proponent Team Members and other persons listed below to obtain, and at all times keep and maintain in force the insurance as set out in RFP Sections 3.11.1(1)(a) and 3.11.1(1)(b), whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Lands, or any part thereof, or at any facilities or premises of the Sponsors for any purpose whatsoever:
- (a) Commercial/Comprehensive General Liability insurance, having an inclusive limit of not less than \$10,000,000 for each occurrence or accident and general aggregate, and covering all sums which the Proponent, a Proponent Team Member or any other persons listed above may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations or activities carried out in connection with this RFP or RFP Process. The policy or policies shall include:
 - (i) as insureds or additional insureds each of His Majesty The King in right of Ontario, MOI, Infrastructure Ontario and the Client (and each of their respective directors, officers, employees, legislators, members, officials, consultants and agents);
 - (ii) an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by Infrastructure Ontario, His Majesty The King in right of Ontario, MOI, and the Client; and
 - (iii) a waiver of subrogation in favour of all additional insureds;
 - (b) Automobile Liability insurance, in the amount of \$5,000,000 per accident, for vehicles used by Proponents or Proponent Team Members (or their respective directors, officers, employees, consultants, Advisors and agents) while on or at the Lands or on or at any facilities or premises of the Sponsors; and

- (c) all other insurance required to be obtained by Applicable Law.
- (2) As a condition of allowing access to the Lands or the facilities or premises of the Sponsors, the Sponsors may, in their sole discretion, require Proponents to provide evidence acceptable to the Sponsors that the insurance required by RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c) is in place.
- (3) If a Proponent proposes to perform any investigations at the Lands, the risk related to which may not be fully insured under the policies set out in RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c), the Sponsors may, in their sole discretion, require the Proponent, at its own cost and expense, to obtain insurance additional to that specified in RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c).
- (4) All insurance policies required to be obtained by Proponents shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered, or adversely materially amended without the insurer giving at least 30 calendar days' prior written notice to the Sponsors.

3.11.2 Workplace Safety during the RFP Process

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

3.11.3 Infrastructure Ontario Construction Insurance Program

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

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

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

3.12 (*Interview as part of the Evaluation and Scoring of the Proposal*), the Sponsors will provide Proponents with the details of the date and time of such Proponent Interviews, and the manner in which such Proponent Interviews will be conducted.

3.13 Collaborative and Behavioural Assessment

- (1) As part of the evaluation process set forth in RFP Section 7.5.7 (*Step 7 - Scoring of the Collaborative and Behavioural Assessment*), the Sponsors intend to undertake one behavioural assessment (the “**Collaborative and Behavioural Assessment**”) to assess how a Proponent demonstrates the behaviours required to implement effective collaborative working. The process for the Collaborative and Behavioural Assessments is set out in Section 5.0 of Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP. The results of the Collaborative and Behavioural Assessment will be evaluated and scored in accordance with Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP.
- (2) The Collaborative and Behavioural Assessment will comprise of an interactive, collaborative and behavioural assessment workshop. If the Sponsors intend to hold the Collaborative and Behavioural Assessment, then the Sponsors’ intention to do so will be set out in the RFP Data Sheet and the Sponsors will provide Proponents with the details of the date and time of such Collaborative and Behavioural Assessment.
- (3) The Collaborative and Behavioural Assessment will be independently facilitated and managed by a collaborative and behavioural consultant. The Fairness Monitor may attend the workshop comprising the Collaborative and Behavioural Assessment.

4 EARLY DRAFT DOCUMENT SUBMISSION REQUIREMENTS

[Note to Proponents: Sponsors intend to include early submission requirements with respect to subcontracts and Project Co structure by Addendum.]

5 PROPOSAL FORM AND CONTENT REQUIREMENTS

5.1 Format and Content of the Proposal

- (1) Proponents shall submit Proposals organized in accordance with and in the format set out in Schedules 3 to 7B to this RFP.
- (2) Proponents shall submit Proposals, consisting of the following parts:
 - (a) Part A – Proposal Submission Documents, including:
 - (i) the Proposal Submission Form (Schedule 4 to this RFP);
 - (ii) the Proposal Participant Conflict Screening List (Schedule 5 to this RFP);
 - (iii) a Proponent Team Member Declaration (Schedule 6 to this RFP) for each Proponent Team Member;
 - (iv) a Certificate of Officer (Schedule 7A to this RFP) for each Proponent Team Member; and

- (v) an Accounting Firm Letter (Schedule 7B to this RFP) for each Primary Construction Team Member.
 - (b) Part A – the Proposal non-scoring submission, submitted pursuant to Part A of Part 1 of Schedule 3 – Proposal Submission Requirements of this RFP;
 - (c) Part B – the Technical Submission Information, submitted pursuant to Part B of Part 1 of Schedule 3 – Proposal Submission Requirements of this RFP (the “**Proposal Technical Submission**”); and
 - (d) Part C – the Commercial Submission Information, including:
 - (i) the documents specified in Part C of Part 1 of Schedule 3 – Proposal Submission Requirements of this RFP; and
 - (ii) the Commercial Submission Form (Appendix 2 of Part 1 of Schedule 3 – Proposal Submission Requirements to this RFP).
- (collectively, the “**Commercial Submission**”):
- (3) Proponents shall submit each of Parts A, B and C of their Proposals in accordance with the requirements and instructions set out in the RFP Documents.

5.2 Intentionally Deleted

6 SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL

6.1 Submission of Proposal

- (1) Each Proponent shall submit its Proposal on or before the Proposal Submission Deadline using the Electronic Submission and Evaluation System identified in the RFP Data Sheet.
- (2) Each Proponent shall submit its Proposal in three (3) parts, as follows:
 - (a) the first part shall constitute the Proponent’s Proposal Submission Documents;
 - (b) the second part shall constitute the Proponent’s Proposal Technical Submission; and
 - (c) the third part shall constitute the Proponent’s Commercial Submission.
- (3) For the purposes of the RFP Process, the determination of whether the Proposal has been submitted on or before the Proposal Submission Deadline shall be based on the latest (in time) electronic time and date stamp which the Proponent receives from the Electronic Submission and Evaluation System identified in the RFP Data Sheet in relation to the three (3) parts of its Proposal submitted pursuant to RFP Section 6.1(1).
- (4) A Proposal received after the Proposal Submission Deadline, as documented by the electronic time and date stamp, shall remain unopened.
- (5) Proponents shall submit their Proposal using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the Proposal is received by Infrastructure

Ontario prior to the Proposal Submission Deadline, and to ensure each part receives an electronic time and date stamp receipt from the Electronic Submission and Evaluation System confirming its timely delivery. The Sponsors will not accept a Proposal delivered by electronic mail.

- (6) Proponents shall provide electronic copies of their Proposal in the formats specified in Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP.
- (7) If there is any difference whatsoever between the electronic copies of the Proposal in PDF format and native file format of such Proposal submitted through the Electronic Submission and Evaluation System, the copy of the Proposal in the PDF format submitted through the Electronic Submission and Evaluation System shall govern.

6.2 Withdrawal of Proposal

- (1) A Proponent may withdraw its Proposal at any time during the RFP Process by notifying the Contact Person in writing.

6.3 Amendment of Proposal

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

6.4 Proposal Validity Period

- (1) Subject to RFP Section 11.1 (*RFP Not a “Bidding Contract” or a Tender*) and the Proponent’s right to withdraw its Proposal pursuant to RFP Section 6.2 (*Withdrawal of Proposal*), the Proponent’s Proposal will remain valid and in effect until DMCA Close (the “**Proposal Validity Period**”).

7 EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

7.1 Evaluation Committee and Advisors

- (1) The Sponsors will establish an evaluation committee (the “**Evaluation Committee**”) for the purpose of evaluating Proposals in accordance with the RFP Documents. The Sponsors, in their sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the Sponsors’ Advisors, and any other employees or representatives of the Sponsors in any manner determined necessary or desirable by the Sponsors.
- (2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments, evaluation outcomes, weightings and scores of that individual, in respect of the uncompleted steps in the evaluation

process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the Sponsors.

7.2 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, including at any Commercially Confidential Meeting or at any Proponent Interview;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its Proposal, or any statement made by the Proponent, including at any Commercially Confidential Meeting or at any Proponent Interview;
 - (c) seek a Proponent's acknowledgement of the Sponsors' interpretation of the Proposal or any part of the Proposal; and/or
 - (d) seek comment from any third party references specified in the Proponent's Proposal so as to verify matters contained in its 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 any ambiguity in a Proposal or in a statement made by a Proponent including at any Commercially Confidential Meeting or at any Proponent Interview.
- (3) Any written information received by the Sponsors from a 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.

7.3 Determination of Compliance

- (1) For purposes of this RFP, a Proposal is "**non-compliant**" and does not "**comply**" or achieve "**compliance**" with the requirements of the RFP Documents if a Proposal contains a "**Material Deviation**". A Material Deviation is any failure in a Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsors:
 - (a) impedes, in any material way, the ability of the Sponsors to evaluate the Proposal;
 - (b) constitutes an attempt by the Proponent to revise the Sponsors' or the Proponent's rights or obligations under the RFP Documents or affects the Sponsors' ability to enforce the Proponent's obligations pursuant to the RFP Documents in a way not permitted by this RFP; or
 - (c) constitutes an attempt by the Proponent to revise the Sponsors' or the Proponent's rights or obligations under the Draft Development and Master Construction Agreement.

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- (2) A requirement in either this RFP or in the Schedules to this RFP that a Proponent “must” or “shall” do anything is not intended to supersede the concepts of “comply”, “compliance” or “Material Deviation” or any other portion of this RFP Section 7.3 (*Determination of Compliance*).
 - (3) Each Proponent acknowledges and agrees that the Sponsors’ evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsors may waive,
 - (a) any deviation that is not a Material Deviation at any time; and
 - (b) any Material Deviation in accordance with RFP Section 11.3(3).
 - (4) The Sponsors may identify a Material Deviation in a Proposal at any time during the RFP Process and, for clarity, at any step during the evaluation process set out in RFP Section 7.5 (*Steps in the Evaluation Process*). For clarity, if any such Material Deviation in the Proposal of the Preferred Proponent were identified following DMCA Close, such Material Deviation would be dealt with subject to and in accordance with the terms of the Development and Master Construction Agreement.
 - (5) Subject to RFP Section 7.3(3)(b), if the Sponsors determine that a Proposal is non-compliant in accordance with this RFP Section 7.3 (*Determination of Compliance*), the Sponsors may, in their sole discretion and without liability, cost or penalty, declare that the Proposal shall not be given any further consideration and take such action as permitted under RFP Section 7.2 (*Sponsors’ Clarification and Verification of Proposals*). If a declaration by the Sponsors that a Proposal is non-compliant occurs after the scoring of that Proposal has commenced, any scores given to that Proposal shall be declared null and void.

7.4 Non-Compliance Distinguished from Poor Quality

- (1) A Proposal that contains a poor quality response and/or a failure to conform to a requirement of the RFP Documents shall not be deemed to be non-compliant and such poor quality response and/or failure to conform shall not be deemed to be a Material Deviation unless, and only unless, such poor quality response and/or failure to conform to the requirement of the RFP Documents, in the sole discretion of the Sponsors, meets the definition of a Material Deviation as set out in RFP Section 7.3(1).
- (2) A technical compliance or conformance review is only a tool to assist in the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of the Proposal Technical Submissions. Notwithstanding the similarity of terminology, the determination of whether a Proposal, in its entirety, is compliant or non-compliant with the requirements of the RFP Documents is not the same as the concept of “technical compliance” or “technical conformance and/or non-conformance” or any other assessment of quality made during the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of a Proposal.
- (3) The quality of a Proposal, an assessment of which is made during the evaluation and scoring of that Proposal and which is separate and distinct from the assessment of the compliance of a Proposal, may be subject to one or more minimum scoring thresholds in accordance with Part 2 to Schedule 3 – Proposal Format and Evaluation to this RFP.
- (4) A Proposal that does not contain any Material Deviations shall not be automatically presumed to pass any applicable minimum scoring threshold as set out in Part 2 of Schedule 3 – Proposal Format

and Evaluation to this RFP. Any assessment of “technical compliance” or “technical conformance and/or non-conformance” or any other assessment of quality of a Proposal shall not result in any presumed score for that Proposal.

- (5) The submission of a compliant Proposal that contains a poor quality response and/or any failure by a Proponent to conform with any requirement of the RFP Documents which is not a Material Deviation does not derogate from the obligations of the Preferred Proponent pursuant to RFP Section 10.2 (*Preferred Proponent Obligations*), or of the Preferred Proponent (as Project Co) under the Development and Master Construction Agreement to bring all aspects of a Proponent’s Proposal into conformance with the requirements of the Development and Master Construction Agreement, pursuant to its terms, and will not limit any obligation of Preferred Proponent (as Project Co) to comply with the terms of the Development and Master Construction Agreement.

7.5 Steps in the Evaluation Process

7.5.1 Step 1 – Compliance of Proposal Submission Documents

- (1) In Step 1 of the evaluation process, the Sponsors will open each Proposal Submission Document and will review the contents of the Proposal Submission Documents to assess whether it is in compliance with the terms and conditions of the RFP Documents.
- (2) Following this preliminary review of the Proposal Submission Documents, the Sponsors may, in their sole discretion, request and accept any information to rectify non-material errors or deficiencies in a Proposal Submission Document. This includes, but is not limited to, requesting additional clarification, revision, or delivery of any part or whole of the specified deliverables for any reason whatsoever, including the discovery of any defect, missing information, or undiscernible information, including defects in electronic formats.
- (3) If the Sponsors elect to allow rectification, the Proponent will be notified in writing of such non-material errors or deficiencies identified (the “**Rectification Notice**”). Proponents receiving a Rectification Notice are required to provide a response within the deadline set out in the Rectification Notice.
- (4) The Sponsors and their Representatives will review the Proponent’s response to the Rectification Notice, and determine whether the additional information rectifies the non-material errors or deficiencies identified. If the Sponsors determine that the Proponent’s response to the Rectification Notice is satisfactory, the Proposal will proceed to Step 2 of the evaluation process.
- (5) In the event that a Proponent does not respond to the Rectification Notice within the allotted time, or the Proponent’s response to the Rectification Notice does not address or correct the deficiencies or errors, the Sponsors may, in their sole discretion and without liability, cost or penalty, either allow the Proposal to proceed to Step 2 of the evaluation process or disqualify the Proponent.
- (6) Notwithstanding the terms of this Section, the Sponsors and their Representatives are under no obligation to issue a Rectification Notice to any Proponent if any non-material errors or defects are identified during Step 1 of the evaluation process. The Proponent is at all times solely responsible for the accuracy, consistency, and completeness of its Proposal.
- (7) A Proponent’s satisfactory response to a Rectification Notice does not constitute acceptance by the Sponsors of a Proposal or of a Proposal Submission Document, and does not constitute a waiver of

any of the Sponsors' rights under this RFP. All Proposals must still be evaluated further to the requirements set out in this RFP.

- (8) The Rectification Notice process described in this Section is not intended to allow any Proponent to rectify any Material Deviation as defined in Section 7.3 (*Determination of Compliance*).
- (9) If the Sponsors identify a Material Deviation in a Proposal Submission Documents, then, subject to RFP Section 7.3(3)(b), the Sponsors may determine that the Proposal to which the Proposal Submission Documents relates is non-compliant in accordance with RFP Section 7.3 (*Determination of Compliance*) and take such action as described in RFP Section 7.3(5).
- (10) In the event that the Sponsors declare a Proposal to be non-compliant, then the Proposal Technical Submission of that Proponent will not be evaluated, and the Commercial Submission of the Proponent will remain unopened and will not be evaluated.

7.5.2 Step 2 – Review of the Proposal Submission Form

- (1) In Step 2 of the evaluation process, the Sponsors shall review the Proposal Submission Form to:
 - (a) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submissions, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.6 (*Changes to Proponents and Proponent Team Members and Key Individuals*); and
 - (b) assess the Conflict of Interest and Confidential Information sections of the Proposal Submission Form.

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

- (1) In Step 3 of the evaluation process, subject to RFP Section 7.5.3(3), the Proposal Technical Submissions will be evaluated and scored in accordance with Part 1 of Schedule 3 – Proposal Submission Requirements and Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP.
- (2) If a Proponent fails to achieve any of the minimum scores or minimum aggregate weighting thresholds as set out in the applicable provisions of Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP, then, as part of Step 3 of the evaluation process, the Sponsors may, in their sole discretion, determine whether that Proponent's Proposal will continue to be considered in the RFP Process.
- (3) In the event that a Proponent's Proposal Technical Submission fails to achieve any of the minimum scores or minimum aggregate weighting thresholds as set out in the applicable provisions of Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP and the Sponsors do not exercise their discretionary rights as set out in RFP Section 7.5.3(2), the Proponent's Proposal will not continue to Step 4 of the evaluation process. Additionally, the Commercial Submission of that Proponent will remain unopened and will not be evaluated.
- (4) If the Sponsors are to conduct Proponent Interviews with Proponents pursuant to RFP Section 3.12 (*Interview as part of the Evaluation and Scoring of the Proposal*) as part of the evaluation process of this RFP Section 7.5.3 (*Step 3 – Review, Scoring and Interview in respect of the Proposal Technical Submissions*), the results of such Proponent Interviews with the Proponent will be

evaluated and scored in accordance with Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP, and the evaluation and scoring of the Proponent’s Proposal Technical Submission will be subject to the evaluation and scoring attributable to the results of such Proponent Interviews.

- (5) If a Proponent fails to attend the Proponent Interviews contemplated pursuant to RFP Section 3.12 (*Interview as part of the Evaluation and Scoring of the Proposal*), then, as part of Step 3 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsors may, in their sole discretion, determine whether that Proponent’s Proposal will continue to be considered in the RFP Process, and in any event, such failure to attend may have an adverse impact on the score assigned to such Proponent’s Proposal Technical Submission.

7.5.4 Step 4 – Compliance of Commercial Submissions

- (1) In Step 4 of the evaluation process, the Sponsors will open each Commercial Submission and will review the contents of the Commercial Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.
- (2) Following this preliminary review of the Commercial Submissions, the Sponsors may, in their sole discretion, request and accept any information to rectify non-material errors or deficiencies in a Commercial Submission. This includes, but is not limited to, requesting additional clarification, revision, or delivery of any part or whole of the specified deliverables for any reason whatsoever, including the discovery of any defect, missing information, or undiscernible information, including defects in electronic formats.
- (3) If the Sponsors elect to allow rectification, the Sponsors will issue a Rectification Notice to the Proponent. Proponents receiving a Rectification Notice are required to provide a response within the deadline set out in the Rectification Notice.
- (4) The Sponsors and their Representatives will review the Proponent’s response to the Rectification Notice, and determine whether the additional information rectifies the non-material errors or deficiencies identified. If the Sponsors determine that the Proponent’s response to the Rectification Notice is satisfactory, the Proposal will proceed to Step 5 of the evaluation process.
- (5) In the event that a Proponent does not respond to the Rectification Notice within the allotted time, or the Proponent’s response to the Rectification Notice does not address or correct the deficiencies or errors, the Sponsors may, in their sole discretion and without liability, cost or penalty, either allow the Proposal to proceed to Step 5 of the evaluation process or disqualify the Proponent.
- (6) Notwithstanding the terms of this Section, the Sponsors and their Representatives are under no obligation to issue a Rectification Notice to any Proponent if any non-material errors or defects are identified during Step 4 of the evaluation process. The Proponent is at all times solely responsible for the accuracy, consistency, and completeness of its Proposal.
- (7) A Proponent’s satisfactory response to a Rectification Notice does not constitute acceptance by the Sponsors of a Proposal or of a Commercial Submission, and does not constitute a waiver of any of the Sponsors’ rights under this RFP. All Proposals must still be evaluated further to the requirements set out in this RFP.
- (8) The Rectification Notice process described in this Section is not intended to allow any Proponent to rectify any Material Deviation as defined in Section 7.3 (*Determination of Compliance*).

- (9) If the Sponsors identify a Material Deviation in a Commercial Submission then, subject to RFP Section 7.3(3)(b), the Sponsors may determine that the Proposal to which the Commercial Submission relates is non-compliant in accordance with RFP Section 7.3 (*Determination of Compliance*) and take such action as described in RFP Section 7.3(5).

7.5.5 Step 5 – Review and Scoring of the Commercial Submissions

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

7.5.6 Step 6 – Establishing a Proposal Initial Score

- (1) In Step 6 of the evaluation process, upon receipt by, and acceptance of, the Evaluation Committee of the results of the evaluation process, the initial score for each Proposal will be tallied and finalized.
- (2) The Evaluation Committee shall identify up to two Proponents with the highest Proposal Initial Scores (the “**Second Round Proponents**”) and invite the Second Round Proponents to participate in Collaborative and Behavioural Assessments.
- (3) The score established based on this RFP Section 7.5.6 (*Step 6 – Establishing a Proposal Initial Score*) shall be the “**Proposal Initial Score**”.
- (4) In the event of a tie in the Proposal Initial Score between two Proponents, the Sponsors may, in their sole discretion, give the higher ranking to the Proponent who obtained the highest score on its Proposal Technical Submission.

7.5.7 Step 7 - Scoring of the Collaborative and Behavioural Assessment

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

7.5.8 Step 8 – Establishing a Final Proposal Score

- (1) For the purpose of the evaluation process, the weightings and scoring set out in Part 2 of Schedule 3 – Proposal Format and Evaluation to this RFP will apply.

- (2) In Step 8 of the evaluation process, upon receipt by, and acceptance of, the Evaluation Committee of the results of the evaluation process and finalization of the scores of all Proponents' Proposals, the score for each Proposal will be tallied and finalized.
- (3) The score established for each Proposal based on this RFP Section 7.5.8 (*Step 8 – Establishing a Final Proposal Score*) shall be the “**Final Proposal Score**”.

7.5.9 Step 9 – Ranking the Proponents

- (1) In Step 9 of the evaluation process, the Evaluation Committee shall rank only those Proponents that have been evaluated and passed through Steps 1 through 8 of the evaluation process and shall base the ranking on the Final Proposal Score determined in Step 8.
- (2) In the event of a tie in the Final RFP Proposal Score between two Proponents, the Sponsors may, in their sole discretion, give the higher ranking to the Proponent that has scored higher in the Proposal Technical Submission, who shall be identified as the Preferred Proponent and be invited to execute the Draft Development and Master Construction Agreement with the Signing Party. In the event there is a tie in the Proposal Technical Submission scores, then the Proponent having the higher RFP Proposal Commercial Submission score will become the Preferred Proponent. In the event there is a tie in the RFP Proposal Commercial Submission scores, then the Proponent having the higher Collaborative and Behavioural Assessments score will become the Preferred Proponent.

8 GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

8.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

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

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- (3) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of the Proposals or in the exercise of any of the Sponsors' rights under this RFP:
- (a) any instances of poor performance by a Proponent or any of its Proponent Team Members that the Sponsors have experienced; and/or
 - (b) any publicly available information about a Proponent or any of its Proponent Team Members that is, in the Sponsors' sole discretion, credible information.
- (4) Pursuant to the page limit restrictions applicable to any portion of a Proposal as described in this RFP, the Sponsors shall, without discretion, not review, assign an evaluation outcome or weighting to or score any pages of a Proposal that exceed the maximum number of pages specified for the applicable portion of the Proposal.

8.2 Disqualification

- (1) Subject to this RFP Section 8.2(1), the Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member or a Proposal, or reverse their decision to (i) select a Preferred Proponent to proceed to execute the Draft Development and Master Construction Agreement with the Signing Party, or (ii) make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to DMCA Close, if
- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 7.3 (*Determination of Compliance*);
 - (b) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its Proposal during the Collaborative and Behavioural Assessments or during a Proponent Interview;
 - (c) the Proponent contravenes RFP Section 3.3.2 (*Prohibited Contacts and Lobbying Prohibition*) or RFP Section 3.3.3 (*Media Releases, Public Disclosures and Public Announcements*);
 - (d) the Proponent fails to comply with Applicable Law;
 - (e) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;
 - (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates are or become a Restricted Person or a Restricted Person (as defined in subparagraph (a) of the definition of Restricted Person) has, directly or indirectly, an Economic Interest in any of them;
 - (g) the Proposal, including any officer's certificate or any form attached to the Proposal, contains false or misleading information or a misrepresentation;
 - (h) the Proponent or any Proponent Team Member fails to disclose any information (including in any officer's certificate or any other form attached to the Proposal) that would materially adversely affect the Sponsors' evaluation of the Proposal or review;

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- (i) the Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.9 (*Conflict of Interest and Ineligible Persons*) and the Proponent:
 - (i) does not receive a waiver from the Sponsors in accordance with RFP Section 3.9.1(6) or does not receive a consent in accordance with RFP Section 3.9.2(4), as applicable; or
 - (ii) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
 - (j) the Sponsors became aware that the Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor in the 36 months prior to the Proposal Submission Deadline, unless the Proponent has demonstrated to the satisfaction of the Sponsors that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
 - (k) in the opinion of the Sponsors, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section 3.3.4 (*Restrictions on Communications between Proponents – No Collusion*);
 - (l) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
 - (m) the Proponent or any Proponent Team Member has been convicted of an offence in connection with, or any services rendered to the Sponsors or any Ministry, agency, board or commission of the Government of Ontario;
 - (n) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction;
 - (o) the Proponent, or any Proponent Team Member, has an economic or other interest or relationship that:
 - (i) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
 - (ii) could potentially compromise the Sponsors' reputation or integrity or the Sponsors' procurement process, so as to affect public confidence in that process,whether or not such interest creates a Conflict of Interest;
 - (p) the Proponent or a Proponent Team Member fails to attend a Collaborative and Behavioural Assessment; or

- (q) in relation to the Preferred Proponent, the Preferred Proponent fails to execute the Draft Development and Master Construction Agreement in accordance with RFP Section 10.2 (*Preferred Proponent Obligations*).

9 COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED PROPONENT

9.1 Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponent

- (1) Based on the Final Proposal Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the Proposal Validity Period:
- (a) identify in writing the highest ranked Proponent as the Preferred Proponent and either negotiate with such Proponent or accept such Proponent's RFP Proposal as submitted;
 - (b) identify the two highest ranking Proponents as the first negotiations proponent (the "**First Negotiations Proponent**") (highest ranked) and the second negotiations proponent (the "**Second Negotiations Proponent**") (second highest ranked) (collectively, the "**Negotiations Proponents**") and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the Sponsors conclude successful negotiations as the Preferred Proponent; or
 - (c) enter into separate and distinct but contemporaneous negotiations with the First Negotiations Proponent and the Second 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 a Negotiations Proponent's Proposal or the Development and Master Construction Agreement, or both.
- (3) Notwithstanding any negotiations between the Sponsors and the Proponents, but subject to a Proponent's right to withdraw its Proposal, the Proposals of all Proponents shall remain valid and in effect until the expiration of the Proposal Validity Period in accordance with RFP Section 6.4 (*Proposal Validity Period*).
- (4) If, in accordance with RFP Section 9.1(1), the Proponent and the Sponsors negotiate revisions to the Draft Development and Master Construction Agreement, the Sponsors and the Preferred Proponent shall develop a revised Draft Development and Master Construction Agreement and, for the purposes of RFP Section 9, the revised Development and Master Construction Agreement shall be the "Development and Master Construction Agreement".
- (5) The Sponsors may, in their sole discretion and for greater clarity, elect to change the selection of which of the RFP Section 9.1(1) negotiations processes to employ at any time during the application of RFP Section 9.
- (6) In addition, the Sponsors may use the negotiations process to facilitate the resolution of any integration issues raised by the Proposal Technical Submissions of the Negotiations Proponents and the RSSOM Project Agreement. Each Negotiations Proponent consents to the sharing of information in its Proposal Technical Submission with the RSSOM Project Co and EGS Project

Co for this express purpose and acknowledges that any such information may be included in the RSSOM Project Agreement.

- (7) Each Proponents acknowledges and consent to the inclusion of any part of its Proposal Technical Submission into the RSSOM Project Agreement. Such parts will be selected by the Sponsors in consultation with the Proponent to ensure that any integration issues are made known to RSSOM Project Co.

[Note to Proponents: The Sponsors may include additional provisions reflecting the interface(s) between Project Co and EGS Project Co, which will be provided by Addendum.]

9.2 Early Contractor Activities

- (1) Rapid progress on the Project is of paramount importance to the Sponsors. To that end, Sponsors may agree with the First Negotiations Proponent to permit performance of certain activities forming part of the Works (the “**Early Contractor Activities**”) between the date upon which the First Negotiations Proponent is so identified by the Sponsors and DMCA Close (the “**Pre-Closing Period**”). For greater certainty:
 - (a) the Early Contractor Activities constitute part of the Works; and
 - (b) the First Negotiations Proponent includes the Preferred Proponent.

9.3 Early Contractor Costs

- (1) The First Negotiations Proponent shall:
 - (a) subject to RFP Section 9.3(2), be solely responsible for all costs and expenses incurred by the First Negotiations Proponent in performing the Early Contractor Activities (the “**Early Contractor Costs**”); and
 - (b) provide such evidence to the Sponsors as the Sponsors may reasonably require in order to substantiate any of the Early Contractor Costs incurred by the First Negotiations Proponent in performing the Early Contractor Activities.
- (2) The Sponsors shall reimburse the First Negotiations Proponent for all Early Contractor Costs incurred in connection with the performance of the Early Contractor Activities and paid by the First Negotiations Proponent within 45 Business Days of the date when such evidence as the Sponsors may reasonably require in order to substantiate any of the Early Contractor Costs incurred by the First Negotiations Proponent in performing the Early Contractor Activities is provided to the Sponsors.

9.4 Performance of the Early Contractor Activities

- (1) The First Negotiations Proponent shall not be permitted to access, occupy or otherwise make use of any portion of the Lands for the purposes of performing any Early Contractor Activities.
- (2) Where the First Negotiations Proponent elects not to undertake the Early Contractor Activities within the Pre-Closing Period, such election shall not constitute a breach or violation of any requirement of the RFP and the negotiating position of the First Negotiations Proponent shall not

be in any way prejudiced by such decision, however the scope of work comprising the Early Contractor Activities shall be completed by Project Co as part of the Works pursuant to the terms of the Development and Master Construction Agreement following DMCA Close.

9.5 Appointment of CIDB

[Note to Proponents: Sponsors intend that, prior to appointing the CIDB Chair, they will provide a list of three (3) names to the Preferred Proponent and RSSOM Project Co, each of whom will have a right to veto one (1) of the names on the list.]

- (1) On the date the Sponsors identify a Proponent as a Negotiations Proponent or the Preferred Proponent pursuant to RFP Section 9.1(1), the Sponsors shall identify in writing to the Proponent the Sponsors' choice for its CIDB Technical Member of the CIDB in accordance with the requirements of Appendix A of Schedule 39 – Form of RSSOM Interface Agreement of the Development and Master Construction Agreement.
- (2) Within five days of the Sponsors identifying a Proponent as a Negotiations Proponent or the Preferred Proponent pursuant to RFP Section 9.1(1), the Proponent shall identify in writing to the Sponsors the Proponent's choice for its CIDB Technical Member for the CIDB in accordance with the requirements of Appendix A of Schedule 39 – Form of RSSOM Interface Agreement of the Development and Master Construction Agreement.
- (3) As soon as possible following the identification of the Proponent's choice for its CIDB Technical Member for the CIDB pursuant to RFP Section 9.5(2) and, in any event, by the date that is no later than 30 days following the date described in RFP Section 9.5(2), the Sponsors and the Proponent shall agree to the identity of the CIDB Chair in accordance with the requirements of Appendix A of Schedule 39 – Form of RSSOM Interface Agreement of the Development and Master Construction Agreement.
- (4) Each of the Proponent and the Sponsors shall deliver the CIDB Member Statements and the CIDB Member Agreements that they are responsible for delivering in accordance with, as applicable, Section 1.17 and Section 2.1 of Schedule 10 – DMCA Completion Documents of the RFP, such that all of the Members of the CIDB are appointed and the CIDB is fully constituted on DMCA Close.

10 PREFERRED PROPONENT

10.1 Identification of the Preferred Proponent

- (1) Subject to RFP Sections 11.1 (*RFP Not a "Bidding Contract" or a Tender*) and 11.3 (*Special Circumstances*), the Sponsors intend to identify a Preferred Proponent in accordance with RFP Section 9.1 (*Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponent*).

10.2 Preferred Proponent Obligations

- (1) The Preferred Proponent shall:
 - (a) achieve DMCA Close,

- (i) prior to the DMCA Close Target Date; or
- (ii) if the DMCA Close Target Date has passed and the Sponsors have given their consent, prior to the expiration of the Proposal Validity Period,

based on the Draft Development and Master Construction Agreement in substantially the same form and content as finalized prior to the Proposal Submission Deadline or on the Draft Development and Master Construction Agreement as revised and agreed to by the Preferred Proponent and the Sponsors;

- (b) execute and deliver the Development and Master Construction Agreement, subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require
 - (A) the insertion or addition of information relating to the Preferred Proponent's corporate structure (including a partnership structure) which are not inconsistent with the principles set out in the Draft Development and Master Construction Agreement;
 - (B) the insertion or addition of information or the modification of provisions of the Draft Development and Master Construction Agreement required in order to reflect accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or
 - (C) the revision of provisions in the Draft Development and Master Construction Agreement to more accurately reflect the result of negotiations in accordance with RFP Section 9.1 (*Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponent*);
 - (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Draft Development and Master Construction Agreement (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Draft Development and Master Construction Agreement; and
 - (iv) changes, additions and modifications to those parts of the Draft Development and Master Construction Agreement which are indicated in such agreements as being subject to completion or finalization,

provided that, in each case, the changes, additions or modifications identified in RFP Section 10.2(1)(b) are consistent with the principles set out in the Draft Development and Master Construction Agreement, are consistent with RFP Section 10.2(3), and are otherwise acceptable to the Sponsors, acting reasonably;

- (c) maintain its prices in accordance with the terms and conditions of this RFP, subject only to revisions to any of the prices explicitly agreed to by the Sponsors;

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- (d) within five Business Days of identification as the Preferred Proponent, deliver curricula vitae for (i) all Key Individuals identified in Schedule 9 – Key Individuals of the Draft Development and Master Construction Agreement which have not already been provided as part of the Preferred Proponent’s Proposal, and (ii) all positions identified in Schedule 9 – Key Individuals of the Draft Development and Master Construction Agreement, such curricula vitae to be in the form set out in Attachment 1 of Appendix 1 of Part 1 of Schedule 3 to this RFP;
- (e) on or before DMCA Close, deliver or cause to be delivered to the Sponsors all DMCA Completion Documents as set out in Schedule 10 – DMCA Completion Documents to this RFP.
- (2) The Preferred Proponent shall provide access and shall promptly make available to the Sponsors and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsors from time to time in connection with the Sponsors’ due diligence investigations, including any draft or executed contracts and other documents not otherwise provided to the Sponsors pursuant to this RFP that are related to the Project or to be entered into by Preferred Proponent (as Project Co) and/or the other Proponent Team Members in respect of the Project and copies of any written representation, statements, assurances, commitments or agreements which the Preferred Proponent, any Preferred Proponent team member or any of their respective Advisors have received from any municipality, governmental authority or utility relating to the Project.
- (3) The Preferred Proponent acknowledges and agrees that:
- (a) further to RFP Section 7.4(1), the Sponsors, in their sole discretion, may incorporate certain parts of its Proposal into the Development and Master Construction Agreement. Notwithstanding the foregoing, the Sponsors shall act reasonably in incorporating any specific part of the Proposal where the Preferred Proponent demonstrates to the Sponsors that incorporating such part of the Proposal (the “**Specific Proposal Part**”) without also incorporating a related specific part(s) of the Proposal will (i) materially adversely change the intent, or materially prejudice the interpretation, of the Specific Proposal Part or the Development and Master Construction Agreement, as contemplated by the Proposal, or (ii) otherwise materially adversely affect the performance of the Works by Preferred Proponent (as Project Co) under the Development and Master Construction Agreement; and
- (b) save and except for any parts of its Proposal incorporated into the Development and Master Construction Agreement, on DMCA Close, its Proposal will be superseded entirely by the Development and Master Construction Agreement and rendered null and void in accordance with the Development and Master Construction Agreement.

10.3 The Sponsors – Authorization and Approvals

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

11 GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT**11.1 RFP Not a “Bidding Contract” or a Tender**

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

11.2 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion:
- (a) reject any or all of the Proposals;
 - (b) reject the Key Individuals proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
 - (c) accept any Proposal;
 - (d) cause the Signing Party to enter into a Development and Master Construction Agreement with the Preferred Proponent;
 - (e) if only one Proposal is received, elect to accept or reject it or enter into a Development and Master Construction Agreement with the Proponent;
 - (f) elect to cancel the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before DMCA Close;
 - (g) alter the Timetable, the RFP Process or any other aspect of this RFP; and
 - (h) cancel this RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants.
- (2) As part of a Proponent’s Proposal, each Proponent Team Member of any Proponent is required to provide a certificate of an officer from such Proponent Team Member in the form attached as RFP Schedule 7A – Certificate of Officer to this RFP. Each Primary Construction Team Member is required to provide an accounting firm letter for itself and, if it is a joint venture, for each joint venture party, in the form attached as Schedule 7B – Form of Accounting Firm Letter to this RFP from a professional accounting and advisory firm that is reputable in the applicable jurisdiction with expertise in forensic reviews dated no earlier than two years prior to the RFP issuance date.

Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion, require at any time, including any time after a Proponent has submitted its Proposal, that any Proponent Team Member of any Proponent provide or resubmit a Certificate of Officer from such Proponent Team Member in the form attached as Schedule 7A – Certificate of Officer to this RFP, or may require any Primary Construction Team Member of any Proponent to provide or resubmit an accounting firm letter in the form attached as Schedule 7B – Form of Accounting Firm Letter to this RFP for itself and, if it is a joint venture, for each joint venture party.

- (3) Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion:
- (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures with respect to bidding practices or ethical behaviour of the Proponents and Proponent Team Members; and
 - (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the Sponsors with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.
- (4) Further to RFP Section 11.2(3), and in the event that any Proponent and/or Proponent Team Member:
- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to RFP Section 11.2(3); or
 - (b) complies with Sponsors' requirement as prescribed in accordance with RFP Section 11.2(3), but the Sponsors determine that any Proponent and/or Proponent Team Member has or may have engaged in inappropriate bidding practices or unethical behaviour,

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

11.3 Special Circumstances

- (1) If the Sponsors determine that all of the Proposals submitted are non-compliant in accordance with RFP Section 7.3 (*Determination of Compliance*), the Sponsors may, in their sole discretion:
- (a) take any action in accordance with RFP Section 11.2 (*General Rights of the Sponsors*);
 - (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their Proposals for re-submission; or
 - (c) enter into negotiations with any one or more of the Proponents to attempt to finalize an agreement and enter into a Development and Master Construction Agreement.

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- (2) If the Sponsors receive,
- (a) one Proposal and that Proposal is compliant; or
 - (b) more than one Proposal, but only one compliant Proposal,
- the Sponsors may, in their sole discretion:
- (i) take any action in accordance with RFP Section 11.2(1); or
 - (ii) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a compliant Proposal, or enter into a Development and Master Construction Agreement with the Proponent that submitted a compliant Proposal.
- (3) The Sponsors may, in their sole discretion, 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.
- (4) If at any time prior to the Proposal Submission Deadline, a Proponent is disqualified or withdraws from the RFP Process, the Sponsors may, in their discretion, invite a Reserve Prequalified Party to participate in the RFP Process. Prior to and as a condition of becoming a Prequalified Party and a Proponent under this RFP, such Reserve Prequalified Party shall be required to satisfy the requirements of Section 5.2(2) of the RFQ. Upon the satisfaction of such conditions, such Reserve Prequalified Party shall become a Prequalified Party and a Proponent under this RFP.

11.4 Sponsors' Liability for Proponent's Costs

11.4.1 General

- (1) Except as provided in RFP Section 11.4.2 (*Proposal Fee*), neither the Sponsors nor the Government of Ontario shall be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Proponent Advisor or any person connected with any one of them, as a result of any action taken by the Sponsors in accordance with RFP Sections 11.2 (*General Rights of the Sponsors*) or 11.3 (*Special Circumstances*).

11.4.2 Proposal Fee

- (1) The Sponsors will specify in the RFP Data Sheet if they offer a Proposal Fee for the Project.
- (2) If a Proposal Fee is offered for the Project, then the amount of the Proposal Fee is set out in the RFP Data Sheet, and, subject to the provisions of this RFP Section 11.4.2 (*Proposal Fee*), the Sponsors shall pay such Proposal Fee plus any applicable HST to each Proponent other than the Preferred Proponent that entered into the Development and Master Construction Agreement (the "**Proposal Fee Payment**") within 20 Business Days following the later of DMCA Close and the satisfaction of the conditions set out in RFP Section 11.4.2(4).
- (3) The Preferred Proponent that entered into the Development and Master Construction Agreement shall not be eligible to be paid or have any entitlement under this RFP to receive the Proposal Fee.

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- (4) In order for a Proponent other than the Preferred Proponent that entered into the Development and Master Construction Agreement to be eligible to be paid or to have any entitlement under this RFP to receive the Proposal Fee, each of the following conditions must be satisfied:
- (a) a Proponent must submit a full and proper Proposal, provided that the Sponsors shall determine whether a Proposal is full and proper based on factors that include whether the Proposal is compliant with this RFP (as determined in accordance with RFP Section 7.3 (*Determination of Compliance*)) and whether the Proposal received a Final Proposal Score with respect to its Proposal Technical Submission of at least 60%;
 - (b) a Proponent must not have withdrawn from this RFP Process or withdrawn its Proposal after the Proposal Submission Deadline;
 - (c) the Proponent and its Proposal must not have been disqualified by the Sponsors pursuant to RFP Section 8.2 (*Disqualification*); and
 - (d) the Proponent must have executed and delivered an acknowledgement and release from the Proponent and its Proponent Team Members in the form set out in the RFP Data Sheet (the “**RFP Process Release**”).
- (5) Any additional requirements for Proponents to take into consideration in relation to the Proposal Fee are set out in the RFP Data Sheet.
- (6) The Proposal Fee Payment shall represent full and final satisfaction of any liability of the Sponsors and the Government of Ontario to the Proponent and Proponent Team Members in connection with this RFP for the time period up until the date of the RFP Process Release delivered pursuant to RFP Section 11.4.2(4)(d). For greater certainty, nothing in this Section 11.4.2(6) shall limit or prejudice any right of the Sponsors under this RFP or any liability or obligation of the Proponent or the Proponent Team Members under this RFP.

11.4.3 Break Fee

- (1) Any Break Fee offered by the Sponsors for the Project shall be set out in the RFP Data Sheet and, subject to RFP Section 11.4.3(5), shall only be paid by the Sponsors when the Sponsors have been satisfied that:
- (a) the Proponent has demonstrated that it has been an active participant through the RFP Process;
 - (b) the Proponent has provided substantiation of its active participation in the RFP Process as requested by the Sponsors; and
 - (c) any other requirements in respect of the Break Fee set out in the RFP Data Sheet have been satisfied.
- (2) The amount of the Break Fee payable to each eligible Proponent is set out in the RFP Data Sheet. At any time following the cancellation of the RFP Process, and subject to the Sponsors obtaining any necessary approvals, including from the Province, the Sponsors in their sole discretion may increase the amount of the Break Fee.

- (3) Payment of a Break Fee shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Proponent and Proponent Team Members in connection with this RFP, and the Sponsors' obligation to pay the Break Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from the Proponent and Proponent Team Members of all such obligations and liabilities.
- (4) If the RFP Process is cancelled, a Proponent shall only be eligible to receive a Break Fee and the Proponent will not be eligible to receive a Proposal Fee as well. For greater certainty, a Proponent shall not be eligible to receive both a Break Fee and a Proposal Fee relating to the Proponent's participation in the RFP Process for this Project.
- (5) Each Proponent acknowledges and agrees that the obligation for the Sponsors to pay a Break Fee pursuant to this RFP is conditional on and subject to the Sponsors obtaining any necessary approvals in respect of making such payment, including from the Province.

11.5 Applicable Law, Attornment and Limit on Liability

- (1) This RFP shall be governed and construed in accordance with Applicable Law.
- (2) The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP Process on any jurisdictional basis, including *forum non conveniens*; and
 - (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 11.5 (*Applicable Law, Attornment and Limit on Liability*).
- (3) Notwithstanding that the submission of a Proposal is not a tender and is not intended to and does not create a bidding contract or "Contract A" but without limiting any provision of the Development and Master Construction Agreement, each Proponent agrees that if any of the Sponsors or the Sponsors' Advisors is found to be liable, in any way whatsoever, for any act or omission of any of them in respect of the RFP Process, the total liability of the Sponsors to any Proponent, and the aggregate amount of damages recoverable against the Sponsors for any matter relating to or arising from any act or omission by the Sponsors or the Sponsors' Advisors, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors or the Sponsors' Advisors, shall be no greater than the lesser of (a) the Proponent's cost of preparing its Proposal, and (b) the Break Fee.

11.6 Licences, Permits, etc.

- (1) If a Proponent is required by Applicable Law to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal or in the Draft Development and

Master Construction Agreement, neither acceptance of the Proposal nor execution of the Development and Master Construction Agreement by the Sponsors shall be considered to be approval by the Sponsors of carrying on such activity without the requisite licence, permit, consent or authorization.

11.7 Power of Legislative Assembly

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

12 NOTIFICATION AND DEBRIEFING

- (1) Any time after the Preferred Proponent has been identified, the Sponsors will notify all other Proponents that they have not been selected as the Preferred Proponent. Notwithstanding such notification, but subject to a Proponent's right to withdraw its Proposal in accordance with RFP Section 6.2(1), the Proponent's Proposal will remain valid and in effect until the expiration of the Proposal Validity Period in accordance with RFP Section 6.4 (*Proposal Validity Period*).
- (2) At the written request of any unsuccessful Proponent, the Sponsors, including a member or members of the Evaluation Committee, will meet with the unsuccessful Proponent on one occasion to provide a debriefing as follows:
 - (a) if a debriefing is requested by the Proponent before the date that is 15 Business Days following the date the Proposal Fee Payment is made to the Proponent pursuant to RFP Section 11.4.2 (*Proposal Fee*), then the debriefing will occur within 90 days following the date of such payment; or
 - (b) if a debriefing is requested by the Proponent after the expiry of such 15 Business Day period, then the debriefing will occur after the earlier to occur of the date of any withdrawal by the Proponent of its Proposal in accordance with RFP Section 6.2(1) or DMCA Close.

13 DEFINITIONS

13.1 General

- (1) Unless otherwise defined in this RFP Section 13 (*Definitions*), capitalized terms and expressions used in this RFP have the meanings given to them in the Draft Development and Master Construction Agreement.
- (2) In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (3) Any reference in this RFP to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.
- (4) All references in this RFP to the Sponsors' or Infrastructure Ontario's "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

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

13.2 RFP Definitions

Whenever used in the RFP:

- (1) “Acquiree” is defined in RFP Section 3.6.2(1);
- (2) “Acquirer” is defined in RFP Section 3.6.2(1);
- (3) “Ad Hoc Meeting” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (4) “Addendum” means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7 (*Addenda/Changes to the RFP Documents*);
- (5) “Advisor” means any person or firm retained to provide professional advice to any one of the Sponsors, a Proponent, or a Proponent Team Member, as applicable;
- (6) “Affiliate” means an “affiliate” as that term is defined in the Business Corporations Act (Ontario) on the date hereof and any successor legislation thereto, and in the case of each Proponent and each of its Proponent Team Members, such term shall include each of their respective unitholders, shareholders, partners or owners, as the case may be;
- (7) “Assignment of Project Documents” means the assignment agreement entered into on or before DMCA Close between Preferred Proponent (as Project Co) and Contracting Authority in the form attached to Schedule 9 – Form of Assignment of Project Documents to this RFP;
- (8) “Background Information” means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (9) “Break Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal in the event that the RFP Process is cancelled, as determined by the Sponsors in accordance with RFP Section 11.4.3 (*Break Fee*);
- (10) “Business Day” means any day other than a Saturday, a Sunday, a statutory holiday in the province of Ontario or any day on which banks are not open for business in the city of Toronto, Ontario;
- (11) “Change in Control” means, with respect to a person
 - (a) any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority, through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent

from changing the approval of a decision, direction of the management, actions or policies of such person.

- (12) “Client” means the client or clients listed in the RFP Data Sheet in respect of RFP Section 1.1(1);
- (13) “Collaborative and Behavioural Assessment” is defined in RFP Section 3.13(1).
- (14) “Commercial Submission” is defined in RFP Section 5.1(2)(d);
- (15) “Commercial Submission Information” means the information contained in the Proponent’s Commercial Submission;
- (16) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);
- (17) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);
- (18) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (19) “Conflict of Interest” is defined in RFP Section 3.9.1(7);
- (20) “Consultation Session” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (21) “Contact Person” is defined in RFP Section 3.2.1 (*Contact Person*);
- (22) “COR Certification” has the meaning given in the Draft Development and Master Construction Agreement;
- (23) “COR-Certified Construction Project Co Party” has the meaning given in the Draft Development and Master Construction Agreement;
- (24) “COR-Qualified Construction Project Co Party” has the meaning given in the Draft Development and Master Construction Agreement;
- (25) “Data Room” is defined in RFP Section 2.4(1);
- (26) “Design Team” has the meaning given in the Draft Development and Master Construction Agreement;
- (27) “Development and Master Construction Agreement” means the development and master construction agreement entered into by the Signing Party and the Preferred Proponent (as Project Co) on DMCA Close;
- (28) “Documents” is defined in Schedule 9 – Form of Assignment of Project Documents to this RFP;
- (29) “DMCA Close” means the date the Development and Master Construction Agreement is executed by the Preferred Proponent (as Project Co) and the Signing Party;
- (30) “DMCA Close Target Date” means the date set out as the DMCA Close Target Date in the Timetable;

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- (31) “DMCA Completion Documents” means, collectively, the documents and deliverables set out in Schedule 10 – DMCA Completion Documents to this RFP;
- (32) “Draft Assignment of Project Documents” means the draft of the assignment agreement attached as Schedule 9 – Form of Assignment of Project Documents to this RFP, as may be revised in accordance with this RFP;
- (33) “Draft Development and Master Construction Agreement” means the draft of the Development and Master Construction Agreement attached as Schedule 8 – Form of Development and Master Construction Agreement to this RFP and as more generally described the RFP Data Sheet, as may be revised in accordance with this RFP;
- (34) “Economic Interest” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment related benefits;
- (35) “EGS Project Co” has the meaning given in the Draft Development and Master Construction Agreement;
- (36) “Electronic Submission and Evaluation System” means the electronic tendering software named AWARD® by Commerce Decisions®;
- (37) “Evaluation Committee” is defined in RFP Section 7.1(1);
- (38) “Fairness Monitor” is defined in the RFP Data Sheet in respect of RFP Section 1.4 (*Fairness Monitor*);
- (39) “Final Proposal Score” is defined in RFP Section 7.5.8(3);
- (40) “FIPPA” is defined in RFP Section 3.8.1(1)(a);
- (41) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);
- (42) “Government of Ontario” means His Majesty The King in right of the Province of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;
- (43) “Guidelines” has the meaning given in the Draft Development and Master Construction Agreement;
- (44) “Identified Proponent Parties” is defined in RFP Section 3.6.1(1);
- (45) “IHSA” has the meaning given in the Draft Development and Master Construction Agreement;
- (46) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (47) “Ineligible Person’s Affiliate” is defined in RFP Section 3.9.2(1);
- (48) “Ineligible Persons” is defined in RFP Section 3.9.2(1);

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- (49) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (50) “IO” is defined in RFP Section 1.1(1);
- (51) “IOCIP” is defined in RFP Section 3.11.3(1);
- (52) “IOCIP Broker of Record” means Aon Reed Stenhouse Inc.;
- (53) “ISO 45001 Accreditation” has the meaning given in the Draft Development and Master Construction Agreement;
- (54) “Key Individual” means those individuals identified in the Proponent’s Prequalification Submission as key individuals (if applicable);
- (55) “Key Issues” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (56) “Legal/Commercial CCMs” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (57) “Material Deviation” is defined in RFP Section 7.3(1);
- (58) “MFIPPA” is defined in RFP Section 3.8.1(1)(b);
- (59) “MOI” is defined in RFP Section 1.1(7);
- (60) “MTO” or “Ministry of Transportation” means the His Majesty The King in right of Ontario as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority;
- (61) “OILC” is defined in RFP Section 1.1(1);
- (62) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);
- (63) “Prequalification Submission” is defined in RFP Section 1.2(1);
- (64) “Prequalified Parties” is defined in RFP Section 1.2(1);
- (65) “Primary Construction Team” is defined in the RFQ;
- (66) “Primary Construction Team Member” is defined in the RFQ;
- (67) “Primary Design Team” is defined in the RFQ;
- (68) “Primary Design Team Member” is defined in the RFQ;
- (69) “Probability-Impact Matrix” means the probability-impact matrix entitled [“Subway Project Probability-Impact Matrix”] in the Data Room;
- (70) “Proposal Validity Period” is defined in RFP Section 6.4;

- (71) “Prohibited Act” means:
- (a) offering, giving or agreeing to give to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to a Proponent becoming a Preferred Proponent or a Negotiations Proponent; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to a Proponent’s Proposal;
- provided that this definition shall not apply to a Proponent or Proponent Team Member (or anyone employed by or acting on their behalf) providing consideration to the Sponsors or any public body in the ordinary course;
- (b) entering into any other agreement with the Sponsors or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by a Proponent or any Proponent Team Members, Key Individuals or any of their Affiliates, or on its behalf or to its knowledge, to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Sponsors, provided that this definition shall not apply to a fee or commission paid by the Proponent or any Proponent Team Member or any of their Affiliates (or anyone employed by or acting on their behalf) to the Sponsors or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this RFP Section 13.2(65);
 - (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this RFP Process, including in relation to the Development and Master Construction Agreement; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;
- (72) “Prohibited Contacts” is defined in RFP Section 3.3.2(2);
- (73) “Project” is defined in RFP Section 1.1(2);
- (74) “Project Co” is the successful proponent that has executed the Development and Master Construction Agreement with the Signing Party;
- (75) “Proponent Blended Fee” is the blended fee calculated in accordance with Section 4.1(a) of RFP Schedule 3 Part 2;
- (76) “Proponent Consultation Process” is defined in Schedule 2 - Proponent Consultation Process to this RFP;
- (77) “Proponent Interviews” is defined in RFP Section 3.12(1);

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- (78) “Proponent Representative” is defined in RFP Section 1.2(2);
- (79) “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;
- (80) “Proponents” is defined in RFP Section 1.1(2);
- (81) “Proponents’ Meeting” is defined in RFP Section 3.4.1(1);
- (82) “Proposals” is defined in RFP Section 1.1(3)(a);
- (83) “Proposal Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal, as determined by the Sponsors in accordance with RFP Section 11.4.2 (*Proposal Fee*);
- (84) “Proposal Fee Payment” is defined in RFP Section 11.4.2(2);
- (85) “Proposal Information” is defined in RFP Section 3.8.4(5);
- (86) “Proposal Information Licence” is defined in RFP Section 3.8.4(4);
- (87) “Proposal Submission Deadline” is the date set out for this submission in the Timetable;
- (88) “Proposal Submission Documents” means the documents submitted pursuant to RFP Section 5.1(2)(a);
- (89) “Proposal Submission Form” means the submission form submitted by a Proponent as part of its Proposal in the form attached to Schedule 4 – Proposal Submission Form to this RFP;
- (90) “Proposal Validity Period” is defined in RFP Section 6.4(1);
- (91) “Proposed Change in Identified Proponent Party” is defined in RFP Section 3.6.1(3);
- (92) “Reserve Prequalified Party” has the meaning provided in the RFQ;
- (93) “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:
- (a) (1) is subject to any economic or political sanctions imposed by Canada or Ontario or (2) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which the Sponsors consider unacceptable in their sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious

- to National Security) that could result in an order described in (i) being issued (as determined by the Sponsors in their sole discretion);
- (d) in the case of an individual, he or she (or in the case of a legal entity, any members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (e) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (f) is subject to a material claim of the Sponsors or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Sponsors’ view be reasonably likely to materially affect the ability of the Proponent to perform its obligations under the Draft Development and Master Construction Agreement if it were to become the Preferred Proponent under the RFP Process; or
 - (g) has a material interest in the production of tobacco products;
- (94) “RFIs” is defined in RFP Section 3.2.2(1);
- (95) “RFP” is defined in RFP Section 1.1(1);
- (96) “RFP Data Sheet” means Schedule 1 – RFP Data Sheet to this RFP;
- (97) “RFP Documents” is defined in RFP Section 2.1(1);
- (98) “RFP Process” is defined in RFP Section 1.1(4);
- (99) “RFP Process Release” is defined in RFP Section 11.4.2(4)(d);
- (100) “RFQ” is defined in RFP Section 1.2(1);
- (101) “RSSOM Project Agreement” has the meaning given in the Draft Development and Master Construction Agreement;
- (102) “RSSOM Project Co” has the meaning given in the Draft Development and Master Construction Agreement;
- (103) “Scheduled Visits” is defined in RFP Section 3.5.1(1);
- (104) “Second Round Proponents” is defined in RFP Section 7.5.6(2);
- (105) “Signing Party” is defined in RFP Section 1.1(8);

- (106) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (107) “Sponsors’ Executive Ad Hoc Meeting” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (108) “Submission Requirements” means all of the submission requirements set out in this RFP;
- (109) “Proposal Technical Submission” is defined in RFP Section 5.1(2)(a)(v);
- (110) “Technical Submission Information” means the information contained in the Proposal Technical Submission;
- (111) “Timetable” is defined in RFP Section 3.1(1);
- (112) “Topic Meetings” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (113) “Work Breakdown Structure” has the meaning given in the Draft Development and Master Construction Agreement; and
- (114) “WSIB” has the meaning given in the Draft Development and Master Construction Agreement.