

Infrastructure Ontario
Design, Build and Finance
Centre for Addiction and Mental Health (CAMH) Phase 1D
Forensic Project
REQUEST FOR PROPOSALS
RFP No. 22-116
(RFP VERSION 3.6)

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REQUEST FOR PROPOSALS

SECTION 1 – INTRODUCTION

1.1 General

(1) This Request for Proposals (“**RFP**”) is issued by Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (Ontario) (“**Infrastructure Ontario**”, also known as “**OILC**” or “**IO**”) or any successor thereto, in conjunction with the Centre for Addiction and Mental Health (referred to as the “**Client**” or “**Contracting Authority**”). Infrastructure Ontario and the Client are collectively referred to as the “**Sponsors**” for the purposes of this RFP.

(2) In this RFP, Prequalified Parties that submit documents in response to this RFP are referred to as “**Proponents**” and their submissions, as may be revised by RFP Sections 5.3 and 5.5, if applicable, are referred to as “**Proposals**”. The entity that is selected by the Sponsors to enter into the Project Agreement is referred to as the “**Preferred Proponent**”. For the purposes of convenience, in this RFP the expression “**Proponents**” also includes Prequalified Parties prior to the submission of their Proposals.

(3) Except as provided in RFP Section 1.1(3)(a), the procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on Financial Close or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) whichever is first (the “**RFP Process**”). Except as provided in RFP Section 10.3.3, only Proponents that submit a Proposal in accordance with this RFP will acquire any rights under the RFP. Except as provided in RFP Sections 3.8.2 and 3.8.3 and except for the Sponsors’ obligation to pay a Break Fee or a Proposal Submission Fee, as applicable, all rights and obligations arising out of the RFP (the bidding contract or “**Contract A**”) terminate either on the cancellation of this RFP Process by the Sponsors, if such cancellation occurs, or,

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

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

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(5) The Project to which this RFP applies has been approved by the Ministry of Infrastructure (“**MOI**”) to proceed as a public-private partnership project. MOI’s “Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector” (the “**IPFP Framework**”) sets out five fundamental principles for the procurement of public infrastructure, including the Project, as follows:

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

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

(7) While the Sponsors will manage the procurement process in respect of the Project, the Preferred Proponent, subject to the requirements and conditions of the RFP Documents, would actually enter into the Project Agreement with the party or parties named as the signing party or parties in the RFP Data Sheet (the “**Signing Parties**”). Unless listed as Signing Parties to the Project Agreement in the RFP Data Sheet, neither Infrastructure Ontario, nor the Government of Ontario will be parties to the Project Agreement.

1.2 Prequalified Parties and Proponent Representatives

(1) Subject to RFP Section 3.6, only those parties that were prequalified through the Project’s Request for Qualifications (“**RFQ**”) process that preceded this RFP are eligible to participate in the RFP Process. The prequalified parties are listed in the RFP Data Sheet (“**Prequalified Parties**”). The prequalification documents submitted by each of the Prequalified Parties in the RFQ process that preceded and was with respect to this RFP Process are referred to as a Prequalified Party’s “**Prequalification Submission**”.

(2) All correspondence from the Sponsors to a Proponent will be sent to the person identified, in the Proponent’s Prequalification Submission, to receive information and notices on behalf of the Proponent (the “**Proponent Representative**”). Each Proponent is solely responsible to ensure that all contact information of the Proponent Representative is accurate and updated at all times during the RFP Process. Proponents may update or revise their Proponent Representatives’ information by notifying the Contact Person, in writing.

1.3 Overview of the Stages of Project Procurement and Implementation

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(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 standalone 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 Procurement Process

The RFP procurement process is the competitive procurement process described in detail in this RFP.

(c) Stage 3 – Implementation of the Project Agreement

Once the Signing Parties and the Preferred Proponent have executed the Project Agreement, the terms and conditions of the Project Agreement shall determine how the Project is to proceed.

1.4 Fairness Monitor

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

SECTION 2 – THE RFP DOCUMENTS AND THE DATA 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 – Submission Requirements and Evaluation Criteria consisting of:
 - (i) Part 1 – Technical Submission Requirements;
 - (ii) Part 2 – Financial Submission Requirements;

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- (iii) Part 3 – Alternative Prices and Separate Prices;
- (iv) Part 4 – Proposal Format and Evaluation;
- (e) Schedule 4 – Proposal Submission Forms;
- (f) Schedule 4A – Participant Conflict Screening List
- (g) Schedule 5 – Proponent Team Member Declaration;
- (h) Schedule 5A – Certificate of Officer;
- (i) Schedule 5B – Form of Accounting Firm Letter;
- (j) Schedule 6 – Guaranteed Price Form;
- (k) Schedule 7 – Form of Escrow Closing Procedure Agreement;
- (l) Schedule 8A – Standby Letter of Credit;
- (m) Schedule 8B – Intentionally Deleted;
- (n) Schedule 8C – Surety’s Consent;
- (o) Schedule 9 – Form of Project Agreement (including all related Schedules, appendices and attachments) as listed in the RFP Data Sheet;
- (p) Schedule 10 – Summary of Proposal Cost Form; and
- (q) Addenda to the RFP Documents, if any.

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

2.2 Conflicts or Inconsistencies in Documents

- (1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising 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;

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

(2) Despite RFP Section 2.2(1), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.2 and, for greater clarity, by the applicable 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 Section 2.3(2), Infrastructure Ontario will circulate this RFP and all other RFP Documents, including Addenda, by placing them in the Data Room and notifying the Proponent Representatives by e-mail that RFP Documents or Addenda, as applicable, have been added to the Data Room. Notification to Proponents by Infrastructure Ontario that documents have been added to the Data Room is a courtesy only and Proponents are solely responsible to ensure that they have 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 Proposals.

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(2) 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.

2.4 Data Room

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

- (a) the distribution of RFP Documents and Addenda (including “black-lined” RFP Documents revised by Addenda);
- (b) the provision of various types of Background Information for the Proponents’ review; 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, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project or the Project Agreement. 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

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ability to rely on information provided by the Sponsors is more particularly set out in the Project Agreement.

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

SECTION 3 – THE RFP PROCESS

3.1 RFP Process Timetable

(1) The deadline for the submission of the Technical Submission (the “**Technical Submission Deadline**”), the deadline for the submission of the Financial Submission (the “**Financial Submission Deadline**”), and the general timetable for the RFP Process (the “**Timetable**”) are 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 Technical Submission Deadline or the Financial Submission Deadline for events that are to occur prior to or on the Technical Submission Deadline or the Financial Submission Deadline, as applicable, including the Technical Submission Deadline itself or the Financial Submission Deadline itself; and
- (b) at any time in the RFP Process for events that are to occur after the Financial Submission Deadline.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

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

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3.2.2 Clarification/RFI Submission Process

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

- (a) Proponents are permitted to submit RFIs categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Proponents (“**General RFIs**”);
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”); and
 - (iii) General RFIs or Commercially Confidential RFIs that may be submitted by a Proponent according to the timetable set out in the RFP Data Sheet that are directly and specifically related to the clarification of and compliance with the financial submission requirements in accordance with RFP Schedule 3, Part 2, the price form in accordance with RFP Schedule 6, or the proposal cost form in accordance with RFP Schedule 10 (each a “**Financial RFI**”);
- (b) if the Sponsors disagree with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsors will give the Proponent an opportunity to either categorize 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;
- (d) if the Sponsors agree with the Proponent’s categorization of a Commercially Confidential RFI, then the Sponsors will provide a response to that RFI to only the Proponent that submitted the RFI; and
- (e) if the Sponsors determine, in their sole discretion, that an RFI submitted by a Proponent as a Financial RFI is not directly related to the requirements of a Financial RFI set out in Section 3.2.2(1)(a)(iii), the RFI may be rejected for review.

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(2) Responses to RFIs prepared and circulated by the Sponsors are not RFP Documents and do not amend the RFP Documents. If, in the Sponsors' sole discretion, responses to RFIs require an amendment to the RFP Documents, such amendment will be prepared and circulated by Addendum in accordance with RFP Section 3.7. Only a response to an RFI that has been incorporated into or issued as an Addendum will modify or amend the RFP Documents and, otherwise, RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.

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

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

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

(6) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with RFP Section 3.2.2 and, for greater clarity, by the applicable deadline set out in the Timetable for the submission of RFIs. None of the Sponsors and the Government of Ontario is responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in 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) The Sponsors may, in their sole discretion, request Proponents to submit comments on the RFP Documents and, in particular, comments on the Project Agreement. Whether the Sponsors intend to permit or require the submission of such comments and the schedule and format for the submission of those comments is set out in the RFP Data Sheet. The Sponsors are not obliged to respond to each comment made by Proponents under this RFP Section 3.2.3. If the Sponsors accept a comment, or part of a comment, and that acceptance requires a change to the RFP Documents, the Sponsors shall implement that change by Addendum.

3.3 **Communications Restrictions**

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

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

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any special rules set out in the RFP Data Sheet in accordance with this RFP Section 3.3.1(1) override the provisions of RFP Section 3.3.2.

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

3.3.2 Prohibited Contacts and Lobbying Prohibition

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

(2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, 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 or any other Ministry, agency or entity listed in the RFP Data Sheet;
or
 - (iii) the Premier of Ontario's office or the Ontario Cabinet office;
- (d) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
- (e) any directors, officers or consultants of any entity listed in RFP Sections 3.3.2(2)(a) to (d).

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

- (a) take any action in accordance with RFP Section 7.1.2; or
- (b) impose conditions on the Proponent's or Proponent Team Member's continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

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

3.3.3 Media Releases, Public Disclosures and Public Announcements

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

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

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

3.3.4 Restrictions on Communications between Proponents – No Collusion

(1) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own Proposal or the Proposal of the 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.

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(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) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the Sponsors may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2.2 for response in accordance with RFP Section 3.2.2.

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

3.4.2 Commercially Confidential Proponent Meetings

(1) 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 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 Schedule 2 – Proponent Consultation Process to this RFP and, if applicable, set out 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. Commercially Confidential Meetings may be held in-person or by videoconference. The Sponsors shall decide which option is

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applicable for each Commercially Confidential Meeting and shall communicate their decision to Proponents in advance of the relevant Commercially Confidential Meeting.

(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 shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7.

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

- (a) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 – Proponent Consultation Process 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 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 Project Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7 provided that the Sponsors shall not be under any obligation to confirm any information by Addendum;
- (c) the Sponsors may share process-related information, including clarifying information, with all Proponents if the need arises; and
- (d) the Proponent, its Proponent Team Members and their respective Advisors and representatives:

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- (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 Site and the Existing Facilities

3.5.1 Scheduled Visits

(1) If the Sponsors have established scheduled dates for (a) Site visits other than to the Existing Facilities (“**Site Visits (Non-Existing Facilities)**”) or (b) Existing Facilities visits (“**Existing Facilities Site Visits**”) for all Proponents and their representatives and Advisors (“**Scheduled Visits**”), the dates and times of the Scheduled Visits will be set out in the Timetable. For clarity, Scheduled Visits are in addition to any Proponent visits scheduled in accordance with RFP Sections 3.5.2 and 3.5.3.

(2) The provisions of RFP Sections 3.5.2(3) to 3.5.2(8) will apply to Site Visits (Non-Existing Facilities) that are Scheduled Visits and the provisions of RFP Sections 3.5.3(4) and 3.5.3(5) will apply to Existing Facilities Site Visits that are Scheduled Visits, applicable *mutatis mutandis*.

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

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3.5.2 Additional Site Visits (Non-Existing Facilities)

(1) Subject to RFP Section 3.5.1(2), this RFP Section 3.5.2 applies to Site Visits (Non-Existing Facilities) that are not Scheduled Visits.

(2) Proponents are not permitted access to the Site other than the Existing Facilities save and except for pursuant to the prior written arrangement with Sponsors for each access. The location and a brief description of such part of the Site are set out in the RFP Data Sheet and are described fully in the Background Information and the Project Agreement.

(3) A Proponent that wishes to arrange a Site Visit(s) (Non-Existing Facilities) shall submit its request to the Sponsors and shall describe:

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

(4) The Proponent's request for a Site Visit(s) (Non-Existing Facilities) must be submitted at least four Business Days (or such other time as set out in the RFP Data Sheet) prior to the proposed time for the Site Visit(s) (Non-Existing Facilities).

(5) Unless otherwise advised by the Sponsors, in their sole discretion, during each Site Visit (Non-Existing Facilities), Proponents shall not be permitted to:

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

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

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

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

3.5.3 Additional Existing Facilities Visits

(1) Subject to RFP Section 3.5.1(2), this Section 3.5.3 applies to Existing Facilities Site Visits that are not Scheduled Visits.

(2) Proponents are not permitted to access the Existing Facilities save and except pursuant to the prior written arrangement with the Sponsors for each access. The Existing Facilities, if any, are listed in the RFP Data Sheet and may be described more fully in the Project Agreement and the Background Information. An Infrastructure Ontario or Client representative will at all times be present to monitor the Proponent's activities during any Existing Facilities Site Visit.

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

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

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

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

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

3.6 Changes to Proponents and Proponent Team Members and Key Individuals

(1) 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

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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 Prequalification Submission, would result in a Change of 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.

(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 further 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 (6) weeks after the occurrence of the date of withdrawal or twenty one (21) days before the Technical Submission Deadline, whichever is earlier.

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

- (a) clearly identify the Proposed Change in Identified Proponent Party (including, as applicable, the continuation in the absence of a withdrawn Identified Proponent Party or any proposed additional or substitute Identified Proponent Party);
- (b) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors in their sole discretion, that the Proposed Change in Identified Proponent Party will not materially adversely affect the Proponent's ability to submit a complete and compliant Proposal or impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Project Agreement, and

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

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

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

(8) The Sponsors may, in their sole discretion, disqualify a Proponent and terminate 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(4));

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- (b) a Proposed Change in Identified Proponent Party is made after the deadlines set out in RFP Sections 3.6(3) or 3.6(4), as applicable; or
- (c) a change in circumstances with respect to a Proponent after the Technical 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 Project Agreement.

(9) If, at any time prior to Commercial Close, 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**”) as a result of an acquisition of the Acquiree by one of the other Proponents or one of the other Proponent's Proponent Team Members (the “**Acquirer**”):

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

(10) If, after identification of the Preferred Proponent pursuant to RFP Section 9.1, the Sponsors determine, acting reasonably, that it is in the best interests of the Sponsors that any individual proposed as a Key Individual in the Preferred Proponent's Proposal be substituted, the Sponsors shall notify the Preferred Proponent (including a detailed explanation of the reasons for such determination), and, within 10 days of receipt by the Preferred Proponent of such notice, the Preferred Proponent shall provide the Sponsors with relevant information on the proposed substitution and shall consult with the Sponsors before finalizing the appointment of such substitution. The proposed substitution must have equal or better qualifications than the qualifications of the Key Individual that they are replacing.

3.7 Addenda/Changes to the RFP Documents

(1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Technical Submission Deadline (for matters relating to the Technical Submission) and prior to the Financial Submission Deadline (for all other matters). 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. The approximate final date that the Sponsors will

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issue an Addendum in respect of the Project Agreement is set out in the Timetable. The Sponsors may issue other Addenda at any time.

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

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

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

3.8 Freedom of Information, Confidentiality and Copyright Matters

3.8.1 Freedom of Information and Protection of Privacy Act

(1) Proponents are advised that the Sponsors may be required to disclose the RFP Documents and 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**").

(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.

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

3.8.2 Confidentiality Agreements

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

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3.8.3 Confidential Information

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

(2) The Proponent agrees that all Confidential Information:

- (a) shall remain the sole property of the Sponsors or the Government of Ontario, as applicable, and the Proponent shall treat it as confidential;
- (b) shall not be used by the Proponent for any purpose other than developing and submitting a Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Project with the Signing Parties;
- (c) shall not be disclosed by the Proponent to any person who is not involved in the Proponent’s preparation of its Proposal or the performance of any subsequent agreement relating to the Project with the Signing Parties, without prior written consent of the Sponsors or the Government of Ontario, as applicable;
- (d) shall not be used in any way detrimental to the Sponsors or the Government of Ontario; and
- (e) if requested by the Sponsors, shall be returned by the Proponents to the Sponsors no later than ten calendar days after that request.

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

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

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

(5) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.8.3 shall survive any cancellation of the RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all 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 secrecy with respect to such information.

3.8.4 Copyright and Use of Information in Proposals

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

- (a) if a Proposal Submission Fee is offered in accordance with RFP Section 10.3.2:
 - (i) for unsuccessful Proponents, upon payment of a Proposal Submission Fee Payment; and

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- (ii) for the Preferred Proponent, upon Commercial Close;
- (b) if the RFP Process is cancelled and a Break Fee is offered in accordance with RFP Section 10.3.3, upon payment of the Break Fee; or
- (c) if RFP Sections 3.8.4(1)(a) and 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 licensing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Project.

(3) All requirements, designs, documents, plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the 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 shall grant to each of, the Sponsors and His Majesty the King in right of Ontario a non-exclusive, perpetual, irrevocable, worldwide, fully paid and royalty free license (fully assignable without the consent of the Proponent and with the right to sub-license 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 Project 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, “**Proposal Information**” includes:

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

(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

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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. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of Infrastructure Ontario, the Client 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 the Sponsors, 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 shall take precedence and govern.

3.8.5 Digital and Data Directive

(1) Proponents acknowledge that the RFP Documents and a part or parts of any Proposal are subject to the Digital and Data Directive and that the 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.

(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 Conflicts 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 Advisor to the Proponent on the grounds of 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,

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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 Advisor to the Proponent or any of the employees of a Proponent, Proponent Team Member or Advisor to the Proponent engaged in the development or oversight of development of the Proponent’s Proposal (including for such employees in their personal capacities):

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

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

3.9.2 Ineligible Persons

(1) As a result of their involvement in the Project, the persons named as “Ineligible Persons” in the RFP Data Sheet, together with any Persons who formerly worked on behalf of either of the Sponsors and in the course of such work had knowledge of confidential information of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage (collectively, “**Ineligible Persons**”), their employees, and any of their subcontractors, advisors, consultants or representatives

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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, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider.

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

(3) An Ineligible Person’s Affiliate may be eligible to participate as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider only after it has obtained a written consent from the Sponsors permitting it to participate as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent Team Member, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider, 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, Advisor to the Proponent, Financial Services Provider or Advisor to a Financial Services Provider;
- (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

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in the preparation and/or oversight of the preparation of the Proposal in the form prescribed by Schedule 4A to this RFP, which list shall be used by the Sponsors in its 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 Proponents and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proponents' involvement in:

- (a) the preparation, presentation and submission of their Proposals;
- (b) attendance at any Proponents Meeting, Commercially Confidential Meeting or any other meeting with the Sponsors;
- (c) due diligence and information gathering processes;
- (d) Scheduled Visits, Site Visits (Non-Existing Facilities) or Existing Facilities Site 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) the issuance and evaluation of competitive procurements for any Costed Elements;
- (h) negotiations; and
- (i) Early Permitting Activities.

(2) Except as explicitly provided in RFP Sections 10.3.2, 10.3.3 and 10.4(3), if applicable, the Sponsors are not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

(1) During the RFP Process, the Proponent is required to obtain, and to cause all Proponent Team Members and other persons listed below to obtain, and at all times keep and maintain in force the insurance as set out in RFP Sections 3.11.1(1)(a) and (b), whenever the Proponent, a Proponent Team

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Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Site (including the Existing Facilities) or at any other facilities or premises of the Sponsors for any purpose whatsoever:

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

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

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

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

3.11.2 Workplace Safety during the RFP Process

(1) As a condition of allowing access to the Site (including the Existing Facilities) or any other facilities or premises of the Sponsors, each of the Sponsors may, in its sole discretion, require

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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 during the Works phase under the Project Agreement will be obtained under the Infrastructure Ontario Construction Insurance Program (“**IOCIP**”). If a Project has been designated by Infrastructure Ontario to proceed under IOCIP, a “**User Guide**” will be posted as Background Information. The User Guide includes the form of confidentiality agreement that must be entered into between a Proponent and the IOCIP Broker of Record and the forms of applications to be completed by a Proponent and submitted to the IOCIP Broker of Record for the Works phase construction insurance.

3.12 **Site, Site Conditions and related Background Information**

(1) Without minimizing the importance of any other provision of this RFP, the Sponsors would like to emphasize that it is critically important for the purposes of each Proponent's Proposal for the Proponent to, and that it is the Proponent's sole responsibility to, closely and carefully review and understand the provisions of the Project Agreement setting out Project Co's obligations and liabilities with regards to the Site, the Site Conditions and the Background Information (including the Technical Reports), including the provisions of Sections 7, 16 and 18 of the Project Agreement.

(2) Without limiting and subject to RFP Sections 2.5 and 3.5 and all other provisions of this RFP, the Proponent is solely responsible for and strongly encouraged to:

- (a) carry out its own independent research and due diligence and perform any other investigations considered necessary by the Proponent, with respect to the Site, including on all issues and risks identified by the Proponent related to Project Co's use of and access to the Site, all Site Conditions, and the Background Information related to the Site, that could impact Project Co or the performance of the Works under the Project Agreement;
- (b) by the applicable deadline set out in the RFP Data Sheet for the submission of RFIs, identify and raise to the attention of the Sponsors, and seek clarification from the Sponsors with respect to, any and all ambiguities, errors and other issues identified by the Proponent with respect to the Background Information related to the Site provided by the Sponsors (including with respect to the Technical Reports); and

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- (c) prior to the Site Due Diligence Request Deadline, if the Proponent determines it is necessary or desirable for the purposes of its Proposal, provide one or more requests to the Sponsors for the Sponsors to conduct additional due diligence and to provide additional Background Information to the Proponents with respect to the Site, including supplemental or new Technical Reports, which request may be granted or refused by the Sponsors, in their sole discretion, including if there is insufficient time before the Technical Submission Deadline for the Sponsors to conduct such due diligence and provide such additional Background Information to the Proponents.

SECTION 4 – PROPOSAL FORM AND CONTENT REQUIREMENTS AND SURETY CONSENT

4.1 Format and Content of the Proposal

(1) Infrastructure Ontario has pre-qualified each person (each a “**Qualified IC**”) listed in the RFP Data Sheet who may act as the Independent Certifier under the Project Agreement. Each such Qualified IC has signed a Standing Offer Agreement with Infrastructure Ontario for the provision of independent certifier services with respect to projects initiated by Infrastructure Ontario. Each Proponent shall:

- (a) select one of the Qualified ICs to be its choice to act as Independent Certifier under the Project Agreement;
- (b) submit as part of its Financial Submission, an offer (“**IC Offer**”) by such Qualified IC in favour of the Sponsors in the form of Part C of Schedule 4 to this RFP, to provide the independent certifier services required by the Independent Certifier Agreement, on the terms and at the prices set out in the IC Offer.

Each Proponent is encouraged to submit a robust IC Offer as part of its Financial Submission. The Sponsors want an Independent Certifier who has the skill, competence and resources to address the unique aspects of the Project, at a reasonable cost. An IC Offer submitted by a Proponent as part of its Financial Submission will not be scored. As noted in RFP Section 8.1(3), the Sponsors are under no obligation to accept an IC Offer.

[Note to Proponents: The entity acting as the Qualified IC may not also act as a Lenders’ Consultant or as an advisor to a PA Party or to any related entities to any PA Party (including, but not limited to, acting as a transaction advisor to either party to a PA Party).]

(2)

- (a) If the Sponsors do not accept an IC Offer of a Preferred Proponent pursuant to Section 8.1(3)(c), the Sponsors may choose the person to act as the Independent Certifier under the Project Agreement in consultation with the Preferred Proponent

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by either (i) issuing a Call-up to one or more Qualified ICs based on the Standing Offer Agreements of those Qualified ICs, or (ii) issuing a request for proposals for the provision of independent certifier services for the Project. In each case the person chosen to provide the independent certifier services will be required to execute and deliver an Independent Certifier Agreement in the form attached as Schedule 6 to the Project Agreement.

- (b) The failure of a Proponent submit an IC Offer shall not be a Material Deviation as described in RFP Section 6.3(1)(a). However should such Proponent become the Preferred Proponent, the Sponsors may choose the person to act as Independent Certifier under the Project Agreement by either (i) issuing a Call-up to one or more Qualified ICs based on the Standing Offer Agreements of those Qualified ICs, or (ii) issuing a request for proposals for the provision of independent certifier services for the Project. In such event, the Preferred Proponent will only be consulted with respect to the evaluation of the potential independent certifiers selected through such process. In each case the person chosen to provide the independent certifier services will be required to execute and deliver an Independent Certifier Agreement in the form attached as Schedule 6 to the Project Agreement.

(3) A Qualified IC shall not act exclusively for any Proponent. Each Proponent may disclose Confidential Information relating to the Project and this RFP to its Qualified IC but only to the extent that such Qualified IC needs to know such information in order to prepare its IC Offer. Each Proponent shall require its Qualified IC to enter into a non-disclosure agreement with such Proponent to ensure that none of:

- (a) such Proponent's or such Proponent Team Members' Confidential Information;
or
- (b) any information contained in or related to the IC Offer,

is disclosed or made known by such Qualified IC to any other person except as permitted by the terms of the non-disclosure agreement, but not in any event to any other Proponent or a Proponent Team Member of another Proponent. If a Qualified IC is in discussion with more than one Proponent regarding this Project, then each such Proponent shall require such Qualified IC to establish an ethical wall between such Proponents and to put in place the rules and procedures set out in Section 4.9 of the IC Offer (Part C of Schedule 4 to this RFP).

(4) Proponents shall submit Proposals organized in accordance with and in the format set out in Schedules 3 to 6 and 10 to this RFP.

(5) Proponents shall submit Proposals as follows:

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- (a) an initial submission, consisting of the following (collectively, the “**Technical Submission**”)
 - (i) Part A – Proposal Submission Documents (Technical Submission Deadline), including:
 - (A) the Proposal Submission Forms (Technical) (Part A of Schedule 4 to this RFP);
 - (B) the Participant Conflict Screening List (Schedule 4A to this RFP);
 - (C) the Proponent Team Member Declaration(s) (Schedule 5 to this RFP) for each Proponent Team Member;
 - (D) the Certificate of Officer (Schedule 5A to this RFP) for each Proponent Team Member; and
 - (E) the Accounting Firm Letter (Schedule 5B to this RFP) for each Construction Prime Team Member (and, in the case where the Construction Prime Team Member is a joint venture, for each joint venture party); and
 - (ii) Part B – Technical Submission Information;
- (b) a further submission consisting of the following (collectively, the “**Financial Submission**”):
 - (i) Part C – Proposal Submission Form (Financial) (Part B of Schedule 4 to this RFP) including an IC Offer (Part C of Schedule 4 to this RFP), and the Surety’s Consent (Schedule 8C to this RFP), each executed; and
 - (ii) Part D – Financial Submission Information, including:
 - (A) Guaranteed Price Form (Schedule 6 to this RFP);
 - (B) Summary of Proposal Cost Form (Schedule 10 to this RFP)
 - (C) the Alternative Price Submissions, if any; and
 - (D) the Separate Price Submissions, if any.

(6) Each Proponent shall submit each of Parts A, B, C and D of its Proposal in accordance with the requirements and instructions set out in the RFP.

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4.2 Surety's Consent

4.2.1 Surety's Consent

(1) Each Proponent must submit a surety's consent as set out in RFP Schedule 8C (a "**Surety's Consent**") in order to secure the issuance of a performance bond and a labour and material payment bond for the Project as required by the Project Agreement. Proponents are advised that, in submitting the Surety's Consent, the Proponent may submit either,

- (a) a Surety's Consent duly completed by a Surety substantially in the same form and content as set out in RFP Schedule 8C, including the form of performance bond and labour and material payment bond attached; or
- (b) a Surety's Consent duly completed by a Surety substantially in the form set out in RFP Schedule 8C including attached forms of a performance bond and a labour and material payment bond which, having regard to the intended purpose of the Project Agreement, the Proponent can demonstrate will result in value for money to the Sponsors.

(2) If the Proponent submits a Surety's Consent pursuant to RFP Section 4.2.1(1)(b) the Sponsors may, in their sole discretion, accept or reject the form of Surety's Consent including the proposed form of performance and labour and material payment bonds attached to the Surety's Consent submitted by the Proponent (the "**Bonding Submission**").

(3) If the Sponsors reject a Proponent's Bonding Submission the Sponsors may, in their sole discretion, either reject the Proponent's Proposal in its entirety or advise the Proponent as to any changes that the Sponsors may require to the Bonding Submission and negotiate the form of Surety's Consent (a "**Revised Bonding Submission**") to meet those requirements, including the resubmission of:

- (a) the proposed form of performance and labour and material payment bonds attached to the Surety's Consent;
- (b) any ancillary amendments to the Project Agreement that may be required; and
- (c) any change that may be required in the Guaranteed Price contained in the Proponent's Proposal resulting from the changes to the Bonding Submission.

(4) If the Sponsors and the Proponent agree to a Revised Bonding Submission, the Sponsors may require the Proponent to submit the agreed form of Revised Bonding Submission to the Sponsors prior to Preferred Proponent notification. The Sponsors shall retain the right to accept, at any stage of the negotiations, the Proponent's initial form of Surety Consent, including the proposed form of performance and labour and material payment bonds, submitted in the Proponent's Proposal.

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(5) In negotiating the Revised Bonding Submission, the parties shall act reasonably in good faith and if, notwithstanding such good faith efforts, the Proponent and the Sponsors fail to arrive at an agreed form of Revised Bonding Submission and the Sponsors do not elect to accept the Proponent's initial form of Surety's Consent, including the proposed form of performance and labour and material payment bonds submitted in the Proponent's Proposal, then the Sponsors may reject the Proponent's Proposal.

SECTION 5 – SUBMISSION, WITHDRAWAL, MODIFICATION OF THE PROPOSAL AND LENDER REQUIREMENTS

5.1 Submission of Proposal

(1) Each Proponent shall submit its Technical Submission on or before the Technical Submission Deadline and its Financial Submission on or before the Financial Submission Deadline. For the purposes of the RFP Process, the determination of whether the Technical Submission or the Financial Submission has been submitted on or before the Technical Submission Deadline or Financial Submission Deadline, as applicable, shall be based on the electronic time and date stamp the Proponent receives from the Electronic Submission and Evaluation System identified in the RFP Data Sheet. A Technical Submission or Financial Submission received after the Technical Submission Deadline, or the Financial Submission Deadline, as applicable, in each case as documented by the electronic time and date stamp, shall remain unopened.

(2) Proponents shall submit their Technical Submissions and their Financial Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that each of the Technical Submission and the Financial Submission is received by Infrastructure Ontario prior to the Technical Submission Deadline and the Financial Submission Deadline, as applicable, and to ensure it 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 Technical Submission or a Financial Submission delivered by electronic mail.

(3) Proponents shall provide electronic copies of their Technical Submissions and Financial Submissions in the formats specified in Part 4 – Proposal Format and Evaluation of Schedule 3 to this RFP.

(4) If there is any difference whatsoever between the electronic copies of the Proposal in PDF format and native file format 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.

5.2 Withdrawal of Proposals

(1) A Proponent may withdraw its Technical Submission using the Electronic Submission and Evaluation System before the Technical Submission Deadline.

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(2) A Proponent may withdraw its Financial Submission using the Electronic Submission and Evaluation System before the Financial Submission Deadline provided that the Proponent resubmits a revised Financial Submission prior to the Financial Submission Deadline.

5.3 Amendment of Proposal

(1) Except as provided in RFP Section 5.5, Proponents may amend their Technical Submissions and Financial Submissions after submission but only if the amended Technical Submission is resubmitted on or before the Technical Submission Deadline and the withdrawn and amended Financial Submission is resubmitted before the Financial Submission Deadline in accordance with the following:

- (a) the Proponent shall withdraw its original Technical Submission or Financial Submission using the Electronic Submission and Evaluation System before the Technical Submission Deadline or Financial Submission Deadline, as applicable; and
- (b) the Proponent shall submit a revised replacement Technical Submission or Financial Submission in accordance with the RFP Documents and on or before the Technical Submission Deadline or Financial Submission Deadline, as applicable in accordance with the requirements of RFP Section 5.1.

5.4 Proposal Irrevocability

(1) Except as provided in RFP Sections 5.6(1) and 5.6(3) and subject RFP Section 5.5 and the Proponent's right to withdraw a Technical Submission before the Technical Submission Deadline the Proposals shall be irrevocable and shall remain in effect and open for acceptance for 140 days after the Financial Submission Deadline (the "**Proposal Validity Period**") or until Financial Close, whichever occurs first.

5.5 Credit Spreads and Lenders Commitment Letter

- (1) (a) After the Financial Submission Deadline, the Indicative Credit Spread Benchmark(s) (if applicable) and, subject to RFP Section 5.5(2)(e), the election pursuant to RFP Section 5.5(1)(b) shall not change.
- (b) On the Financial Submission Deadline, each Proponent shall identify in writing to the Sponsors by way of an election:
 - (i) which form(s) of lending facility and/or debt financing instruments, if any, in respect of which it shall participate in the First Credit Spread Lock-in Date (the "**Credit Spread Election Facilities**"); and

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- (ii) which form(s) of lending facility and/or debt financing instruments, if any, in respect of which it shall hold, subject to RFP Section 5.5(3.1), Credit Spread(s) for from the Financial Submission Deadline to Financial Close (the “**Held Pricing Facilities**”),

and such information shall be reflected in the Financial Model.

- (c) In respect of the Credit Spread Election Facilities, a Proponent shall, no later than 10 Business Days prior to the Financial Submission Deadline and using the process set out in Section 3.2.2 of the RFP, provide to the Sponsors for their review and acceptance, in their sole discretion, a formula in writing describing how its Credit Spread(s) shall move upwards or downwards consistent with the movement in the Indicative Credit Spread Benchmark(s) and the Sponsors shall confirm in writing to such Proponent whether the Sponsors will accept such formula for the purposes of this RFP Section 5.5. The Sponsors shall confirm whether or not they accept the formula submitted by the Proponent no later than 7 Business Days prior to the Financial Submission Deadline. Any formula that is accepted by the Sponsors may be used by the Proponent and the Proponent’s Lenders to explain (A) why the movement, if any, in the Indicative Credit Spread Benchmark(s) is or is not sufficient to require a change to the Credit Spread(s), and (B) how the change, or lack thereof, to the Credit Spread(s) is consistent with the movement, if any, of the Indicative Credit Spread Benchmark(s). Where the formula is not accepted, the provisions of this RFP Section 5.5 shall apply as if any such formula had not been provided to the Sponsors by the Proponent.

(2) Each Proponent that has provided notification pursuant to RFP Section 5.5(1)(b)(i) shall, prior to the identification of the Preferred Proponent under RFP Section 8.1 and no later than 12:00 p.m. on the first credit spread lock-in date *established by the Sponsors* in accordance with this RFP (the “**First Credit Spread Lock-in Date**”), confirm or change in respect of the Credit Spread Election Facilities, the Credit Spread(s) set out in Part D of its Proposal, in accordance with the following process:

- (a) the Sponsors shall provide at least 7 calendar days prior written notice to the Proponents of the Sponsors’ establishment of the First Credit Spread Lock-in Date and provided the Sponsors may revoke their notice and issue a replacement notice in their sole discretion;
- (b) the Proponent shall, no later than the First Credit Spread Lock-in Date, advise the Sponsors of its decision to either confirm or change its Credit Spread(s) in accordance with the following:

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- (i) if there has been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s) on or before the First Credit Spread Lock-in Date, the Proponent shall change its Credit Spread(s) by submitting to the Sponsors:
 - (A) an updated Financial Model that has been,
 - (i) revised only to reflect the Proponent's changes to its Credit Spread(s); and
 - (ii) re-optimized to reflect the revised Guaranteed Price resulting from the change to the Proponent's Credit Spread(s).

For greater clarity, no changes shall be made to the Financial Model other than to change the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);

- (B) an amended Guaranteed Price Form and Summary of Proposal Cost Form revised only to reflect the Proponent's changes to its Credit Spread(s);
- (C) a written explanation and, where applicable, calculations from the Proponent demonstrating:
 - (i) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the Financial Submission Deadline to the First Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (ii) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Financial Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks;

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- (D) a written explanation and, where applicable, calculations prepared and executed by the Proponent's Lenders demonstrating:
 - (i) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the Financial Submission Deadline to the First Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (ii) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Financial Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (E) written confirmation that the Proponent has not changed any variables in the Financial Model or made any revisions to its Financial Submission of its Proposal, except for the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);
- (ii) if there has not been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s), on or before the First Credit Spread Lock-in Date, the Proponent shall not change its Credit Spread(s) and shall submit to the Sponsors:

- (A) a written explanation and, where applicable, calculations from the Proponent demonstrating:
 - (i) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the Financial Submission Deadline to the First Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (ii) that maintaining the Credit Spread(s) as submitted on the Financial Submission Deadline is consistent with the

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movement, if any, in the Indicative Credit Spread Benchmark(s) of the Proponent from the Financial Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (B) a written explanation and, where applicable, calculations prepared and executed by the Proponent's Lenders demonstrating:
 - (i) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the Financial Submission Deadline to the First Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (ii) that maintaining the Credit Spread(s) as submitted on the Financial Submission Deadline is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Proponent from the Financial Submission Deadline to the First Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks;

- (iii) as of the First Credit Spread Lock-in Date, but subject to RFP Sections 5.5(3) and 5.6(2), the revised or unchanged Credit Spread(s), as applicable, and, if applicable, any re-optimization of its Financial Model and any revisions to Part D of its Proposal shall apply until the expiry of the Proposal Validity Period; and

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- (c) if a Proponent fails to confirm or submit a change to the Credit Spread(s) in accordance with RFP Section 5.5(2) on or before the First Credit Spread Lock-in Date, the Sponsors may:
 - (i) deem that the Proponent has amended its Credit Spread(s) to be consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Financial Submission Deadline to the First Credit Spread Lock-in Date and require the Proponent to submit the information set out in RFP Section 5.5(2)(b)(i), failing which the Sponsors may deem the Proposal materially non-compliant; and/or
 - (ii) deem that the Proponent has made no changes to its Credit Spread(s) subsequent to the Financial Submission Deadline and require the Proponent to submit the information set out in RFP Section 5.5(2)(b)(ii), failing which the Sponsors may deem the Proposal materially non-compliant; and/or
 - (iii) deem the Proposal materially non-compliant;
- (d) if, in the sole discretion of the Sponsors, the Proponent's amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(2) is not consistent with the Indicative Credit Spread Benchmark(s), the Sponsors may:
 - (i) require the Proponent to re-submit pursuant to RFP Section 5.5(2)(b); and/or
 - (ii) consider this inconsistency in the evaluation and scoring of the Proponent's Proposal; and/or
 - (iii) decline to select the Proponent as the Preferred Proponent;
- (e) on the First Credit Spread Lock-in Date, each Proponent that has confirmed or changed its Credit Spread(s) in respect of the Credit Spread Election Facilities in accordance with RFP Section 5.5(2) shall identify in writing to the Sponsors by way of an election that, if selected as the Preferred Proponent:
 - (i) which, if any, Credit Spread Election Facilities it shall participate in respect of the Final Credit Spread Lock-in Date (the "**Final Credit Spread Election Facilities**"); and
 - (ii) which, if any, Credit Spread Election Facilities it shall hold Credit Spread(s) for from the First Credit Spread Lock-in Date to Financial Close.

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(3) If the Preferred Proponent has provided notification pursuant to RFP Section 5.5(2)(e)(i), the Preferred Proponent shall, prior to Commercial Close and no later than the date *established by the Sponsors* as the final credit spread lock-in date in accordance with this RFP (the “**Final Credit Spread Lock-in Date**”), further confirm or change, in respect of the Final Credit Spread Election Facilities, the Credit Spread(s) in Part D of its Proposal and as submitted pursuant to RFP Section 5.5(2) in accordance with the following process:

- (a) the Sponsors shall provide at least 1 Business Day prior written notice to the Preferred Proponent of the Sponsors’ establishment of the Final Credit Spread Lock-in Date and provided the Sponsors may revoke their notice and issue a replacement notice in their sole discretion;
- (b) the Preferred Proponent shall, no later than the Final Credit Spread Lock-in Date, advise the Sponsors of its decision to either confirm or change its Credit Spread(s) in accordance with the following:
 - (i) if there has been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s) on or before the Final Credit Spread Lock-in Date, the Preferred Proponent shall change its Credit Spread(s) by submitting to the Sponsors:
 - (A) an updated Financial Model that has been,
 - (i) revised only to reflect the Preferred Proponent’s changes to its Credit Spread(s); and
 - (ii) re-optimized to reflect the revised Guaranteed Price resulting from the change to the Proponent’s Credit Spread(s).

For greater clarity, no changes shall be made to the Financial Model other than to change the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);

- (B) an amended Guaranteed Price Form and Summary of Proposal Cost Form revised only to reflect the Preferred Proponent’s changes to its Credit Spread(s);
- (C) a written explanation and, where applicable, calculations from the Preferred Proponent demonstrating:
 - (i) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the First Credit Spread

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Lock-in Date to the Final Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and

- (ii) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks;

- (D) a written explanation and, where applicable, calculations prepared and executed by the Preferred Proponent's Lenders demonstrating:
 - (i) why the upward or downward movement in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is sufficient to require a change to the Credit Spread(s); and
 - (ii) that the change to the Credit Spread(s) is consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable;

- (E) written confirmation that the Preferred Proponent has not changed any variables in the Financial Model or made any revisions to its Financial Submission, except for the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the revised Credit Spread(s);

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- (ii) if there has not been upward or downward movement in the Indicative Credit Spread Benchmark(s) sufficient to require a change to its Credit Spread(s), on or before the Final Credit Spread Lock-in Date, the Preferred Proponent shall not change its Credit Spread(s) and shall submit to the Sponsors:
 - (A) a written explanation and, where applicable, calculations from the Preferred Proponent demonstrating:
 - (i) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (ii) that maintaining the Credit Spread(s) as submitted on the First Credit Spread Lock-in Date is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (B) a written explanation and, where applicable, calculations prepared and executed by the Preferred Proponent's Lenders demonstrating:
 - (i) why the movement, if any, in the Indicative Credit Spread Benchmark(s) from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date is not sufficient to require a change to the Credit Spread(s); and
 - (ii) that maintaining the Credit Spread(s) as submitted on the First Credit Spread Lock-in Date is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First

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Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date.

For greater clarity, the written explanation shall be supported by facts, justifications and analysis of relevant factors such as new issue spreads, credit default swap spreads, and/or other publicly verifiable spread indices, as applicable. The Sponsors may reject the submission if the calculation related to the movement in the Indicative Credit Spread Benchmarks does not reflect, in the Sponsors' sole discretion, accurate market pricing levels for the relevant instruments included in the Indicative Credit Spread Benchmarks; and

- (iii) as of the Final Credit Spread Lock-in Date, but subject to RFP Section 5.6(2), the revised or unchanged Credit Spread(s), as applicable, and, if applicable, any re-optimization of its Financial Model and any revisions to its Financial Submission provided by the Preferred Proponent shall apply until Financial Close; and
- (c) if the Preferred Proponent fails to confirm or submit a change to the Credit Spread(s) in accordance with RFP Section 5.5(3) on or before the Final Credit Spread Lock-in Date, the Sponsors may:
 - (i) deem that the Preferred Proponent has amended its Credit Spread(s):
 - (A) consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Preferred Proponent from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date; and/or
 - (B) in the case of bonds, to reflect the Clearing Spread set out in RFP Section 5.5(4),

and require the Proponent to submit the information set out in RFP Section 5.5(3)(b)(i) and/or RFP Section 5.5(4); and/or
 - (ii) deem that the Preferred Proponent has made no changes to its Credit Spread(s) subsequent to the First Credit Spread Lock-in Date and require the Preferred Proponent to submit the explanations set out in RFP Section 5.5(3)(b)(ii).

(3.1) Each Proponent that has provided notification under RFP Section 5.5(1)(b)(ii) or RFP Section 5.5(1)(b)(i) that it intends to provide, respectively, Held Pricing Facilities or Credit Spread Election Facilities may, on the First Credit Spread Lock-in Date only, as applicable (i) reduce the Credit Spread(s) set out in the Proponent's Proposal relating to the Held Pricing Facilities (or any of them), or

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(ii) redesignate the Credit Spread Election Facilities (or any of them) as Held Pricing Facilities conditional upon the redesignation resulting in a reduction of the Credit Spread(s) applicable thereto from those set out in the Proponent's Proposal, and, in each case, shall submit to the Sponsors on the First Credit Spread Lock-in Date:

- (a) the decreased Credit Spread(s) for each of the affected Held Pricing Facilities or Credit Spread Election Facilities and an unconditional confirmation that the decreased Credit Spread(s) will remain in effect for the balance of the Proposal Validity Period with respect to the affected Held Pricing Facilities or Credit Spread Election Facilities;
- (b) an updated Financial Model that has been,
 - (i) revised only to reflect the Proponent's decreases to its Credit Spread(s); and
 - (ii) optimized in accordance with the procedure outlined in Part 2 of Schedule 3 to this RFP.

For greater clarity, no changes shall be made to the Financial Model other than to decrease the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the decreased Credit Spread(s);

- (c) an amended Guaranteed Price Form and Summary of Proposal Cost Form revised only to reflect the Proponent's decrease(s) to its Credit Spread(s); and
- (d) written confirmation that the Proponent has not changed any variables in the Financial Model or made any revisions to the Proposal, as applicable, except for the decrease(s) to the Credit Spread(s) and any resulting changes from the re-optimization of the Financial Model to reflect the decreased Credit Spread(s).

(3.2) The Sponsors will evaluate the reasonableness of the Credit Spread(s) for the Credit Spread Election Facilities submitted by the Proponent and as priced as of the Submission Deadline. If the Sponsors, acting in their sole discretion, do not find such Credit Spread(s) to be reasonable, the Sponsors may,

- (a) either at the First Credit Spread Lock-in Date or at the Final Credit Spread Lock-in Date, as the case may be, deem that the Proponent has amended such Credit Spread(s) to be consistent with the movement of the Indicative Credit Spread Benchmark(s) of the Proponent from the Financial Submission Deadline to the First Credit Spread Lock-In Date and/or from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date; provided that if the Sponsors exercise their rights under this Section 5.5(3.2)(a), any deemed amendment to the

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Credit Spread(s) shall be equal to the change in the Indicative Credit Spread Benchmark(s) over the applicable period of time; or

- (b) no later than the identification of Preferred Proponent, deem the Proposal materially non-compliant.

(4) The Preferred Proponent and Lenders (including but not limited to underwriters, mandated lead arrangers and arrangers) acknowledge and agree that if, on the Final Credit Spread Lock-In Date:

- (a) the Clearing Spread for the bonds payable by the Preferred Proponent is less than the Credit Spread derived using Indicative Credit Spread Benchmark(s), the full benefit of such lower Clearing Spread will be passed through to the Sponsors. This Clearing Spread will be reflected in the reduction of the Cost of the Financing payable by the Sponsors as set out in the Financial Model submitted by the Preferred Proponent prior to Financial Close using the optimization procedure set out in the RFP Schedule 3, Part 2, Part B, Section 6.0; or
- (b) the Clearing Spread for the bonds payable by the Preferred Proponent is higher than the Credit Spread derived using the Indicative Credit Spread Benchmark(s), then the Lenders will be required to provide to the Sponsors an explanation for such variance between the Clearing Spread and the Credit Spread derived using the Indicative Credit Spread Benchmark(s) described herein in this section of the RFP, supported by facts, justifications and analysis of relevant factors. Only if such explanation is accepted by the Sponsors, acting in their sole discretion, then such higher Credit Spread will be reflected in the Cost of the Financing payable by the Sponsors as set out in the Financial Model submitted by the Preferred Proponent prior to Financial Close using the optimization procedure set out in the RFP Schedule 3, Part 2, Part B, Section 6.0. If such explanation is not accepted by the Sponsors, acting in their sole discretion, Infrastructure Ontario may exercise their rights set out in RFP Section 5.5(6) without limiting any other rights under this RFP. If, pursuant to RFP Section 5.5(3.2), the Sponsors have concluded, based on similarly rated transactions or similarly rated comparables, that the Credit Spreads are unreasonable, then the Sponsors shall reject any explanation or justification provided by the Lender or Preferred Proponent for the upward deviance between the Credit Spread derived using the Indicative Credit Spread Benchmark process and the Clearing Spread in connection with the Final Credit Spread Lock-in Date; and
- (c) to provide complete transparency, between the time of selection of the Preferred Proponent and targeted Financial Close, the Preferred Proponent and the Lenders will provide periodic updates to the satisfaction of Infrastructure Ontario in respect of (i) the expected Clearing Spread for the bonds using the Indicative

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Credit Spread Benchmark(s) process pursuant to this RFP and (ii) any variances between the expected Clearing Spread for the bonds and the Credit Spread derived using the Indicative Credit Spread Benchmark(s) process pursuant to this RFP.

(5) In a written notice given to the Preferred Proponent the Sponsors shall prescribe the date (provided the Sponsors may give a further notice of a revised date in their sole discretion) on which the Preferred Proponent shall submit to the Sponsors a letter, the form and substance of which shall be satisfactory to the Sponsors, on the letterhead of its Lenders and executed by the Lenders (the “**Lenders Commitment Letter**”) addressed to the Preferred Proponent confirming:

- (a) the Lenders’ funding commitment to provide the financing described in the Financial Submission including as revised under RFP Sections 5.5(2), 5.5(3), 5.5(3.1) or 5.5(4), which, subject to Section 5.5(5)(b), may be subject to such reasonable and customary conditions of the Lenders as agreed to by the Sponsors, acting reasonably;
- (b) that the funding commitment does not contain any material adverse change clause, market flex clause, or any other similar condition which explicitly or implicitly makes the funding commitment by the Lenders conditional on the absence of a material adverse change in the market, or if such conditions were originally applicable that the Lenders have now waived such conditions; and
- (c) that the Lenders accept the Project Agreement without any material change.

Prior to the issuance of the Lenders Commitment Letter, and no later than either the Final Credit Spread Lock-in Date, if applicable, or 5 Business Days prior to the due date of the Lenders Commitment Letter as prescribed by the Sponsors pursuant to this RFP Section 5.5(5), the Preferred Proponent shall submit a draft thereof (the “**Draft Lenders Commitment Letter**”) to the Sponsors for review and comment by the Sponsors.

(6) If (i) in respect of the Final Credit Spread Election Facilities, the amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(3) are not consistent with the Indicative Credit Spread Benchmark(s) of the Preferred Proponent, in the sole discretion of the Sponsors, or (ii) in respect of the Final Credit Spread Election Facilities, the written explanations justifying the amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(3) are not, in the sole discretion of the Sponsors, acceptable to the Sponsors, or (iii) any other of the requirements respecting the amendment or confirmation of the Credit Spread(s) under RFP Section 5.5(3) have not, in the sole discretion of the Sponsors, been satisfied or complied with, or (iv) the Preferred Proponent’s Lenders have not provided a Lenders Commitment Letter which, in the Sponsors’ sole discretion, satisfies the requirements of RFP Section 5.5(5), then:

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- (a) the Sponsors shall, no later than 7 Business Days after the Final Credit Spread Lock-In Date or the date of receipt by the Sponsors of the Lenders Commitment Letter, give written notice to the Preferred Proponent setting out the manner in which any of the foregoing requirements of RFP Sections 5.5(3), 5.5(4) or 5.5(5) have not been satisfied or complied with (the “**Credit Spread Rectification Notice**”). The Preferred Proponent shall have 7 Business Days following the date of the Credit Spread Rectification Notice to rectify the failure to satisfy the requirements as set out in the Credit Spread Rectification Notice (for greater certainty, including the resubmission of an updated Financial Model that provides for revised Credit Spread(s) that are consistent with the changes to the Indicative Credit Spread Benchmark(s) of the Preferred Proponent or the resubmission of the Lenders Commitment Letter) by submitting to the Sponsors a response to the Credit Spread Rectification Notice (the “**Credit Spread Rectification Notice Response**”).
- (b) If the Sponsors, in their sole discretion: (A) are not satisfied with the Credit Spread Rectification Notice Response or with the Lenders Commitment Letter; and/or (B) determine that the Guaranteed Price of the Preferred Proponent’s Proposal as revised by RFP Section 5.5(3) exceeds the budget for the Project; and/or (C) determine that the Guaranteed Price of the Preferred Proponent’s Proposal as revised by RFP Section 5.5(3) changes the overall rank of the Preferred Proponent relative to the other Proponents, the Sponsors may, in their sole discretion and without limitation to any other right under this RFP:
- (i) request the Second Negotiations Proponent (as referred to in RFP Section 8.1(1)(b)) to confirm or change its Credit Spread(s) in accordance with RFP Section 5.5(3), and at the same time request the Preferred Proponent to again confirm or change its Credit Spread(s) in accordance with RFP Section 5.5(3), and based on the results thereof, re-run the evaluation process to determine which of the Preferred Proponent or the Second Negotiations Proponent is then the highest ranked Proponent. If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP;
- (ii) commence negotiations with the Second Negotiations Proponent in accordance with RFP Section 8 including requesting the Second Negotiations Proponent to confirm or change its Credit Spread(s) in accordance with RFP Section 5.5(3). If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in

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place of the first selected Preferred Proponent for all purposes of this RFP;

- (iii) direct the Preferred Proponent to terminate its relationship with its Lenders, and the Sponsors shall conduct, in conjunction with the Preferred Proponent, a competition amongst prospective lenders to become Lenders to the Preferred Proponent following which the Preferred Proponent shall resubmit its Financial Submission to incorporate the financial terms and conditions of the Lenders that are successful in the competition. Based thereon, the Sponsors may, in their sole discretion, continue with the Preferred Proponent in accordance with the provisions of this RFP;
- (iv) commence separate and distinct but contemporaneous negotiations with the Second Negotiations Proponent and the Preferred Proponent. If the Second Negotiations Proponent is then the highest ranked Proponent then the Second Negotiations Proponent shall then become the Preferred Proponent in place of the first selected Preferred Proponent for all purposes of this RFP; or
- (v) request the Second Negotiations Proponent and the Preferred Proponent to resubmit their respective Proposals for evaluation under and in accordance with this RFP, and for such purpose shall establish a new Technical Submission Deadline and Financial Submissions Deadline.

The Sponsors may, in their sole discretion and for greater clarity, elect to change which of the RFP Section 5.5(6)(b) processes to employ at any time during the application of RFP Section 5.5(6)(b). In the event that the Sponsors have determined to proceed under any of RFP Sections 5.5(6)(b)(i), 5.5(6)(b)(ii) or 5.5(6)(b)(iv), then the provisions of RFP Sections 8.1(2), 8.1(4) and 8.1(5) shall apply to such processes. Without limitation to the foregoing, and in their sole discretion, the Sponsors may, if they are not satisfied with the Credit Spread Rectification Notice Response or the Lenders Commitment Letter, at any time notify the Preferred Proponent in a written notice (the “**Termination Notice**”) that the Preferred Proponent is disqualified and is no longer entitled to participate in the RFP Process. In such latter circumstance, the Sponsors may consider the performance of the Preferred Proponent and the Proponent Team Members of the Preferred Proponent and the fact of the giving of the Termination Notice to the Preferred Proponent in any future requests for qualifications issued by the Sponsors.

- (c) The Sponsors may, in their sole discretion, exercise any of their rights under RFP Sections 5.5(6)(b)(i) to 5.5(6)(b)(v) in the event that the Sponsors determine, in

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their sole discretion, that the Lenders have made any change to the Draft Lenders Commitment Letter or the Lenders Commitment Letter.

- (d) In the sole discretion of the Sponsors, the Letter of Credit provided by the Preferred Proponent in accordance with RFP Section 9.1(2) may be returned to the Preferred Proponent within 3 days of delivery by the Sponsors of the Termination Notice and/or such Preferred Proponent may be paid the amount, if any, of the Proposal Submission Fee or the Break Fee under RFP Sections 10.3.2 and 10.3.3. The return of the Letter of Credit and/or the payment of the Proposal Submission Fee or the Break Fee to such Preferred Proponent shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Preferred Proponent and the Proponent Team Members of the Preferred Proponent in connection with this RFP, and the Sponsors' decision to return the Letter of Credit and/or pay the Proposal Submission Fee and the Break Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from such Preferred Proponent and the Proponent Team Members of the Preferred Proponent to that effect.

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

5.6 Extension of Proposal Validity Period

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

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

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Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.

(2) In respect of the Preferred Proponent, the Sponsors shall be considered to have accepted the Preferred Proponent's Proposal, including its revised Credit Spread(s) pursuant to RFP Section 5.5 prior to the expiration of the Proposal Validity Period if the Signing Parties and the Preferred Proponent reach Commercial Close prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable). For greater clarity, the Preferred Proponent shall maintain its prices as set out in its Guaranteed Price Form (as submitted on the Financial Submission Deadline or, if applicable, as amended pursuant to RFP Section 5.5 or during any negotiations process pursuant to RFP Section 5.5(6) or RFP Section 8.1) from Commercial Close until Financial Close, subject only to the adjustments on Financial Close in accordance with Section 3.1(b) of the Project Agreement.

(3) Notwithstanding RFP Section 5.6(1), if, during the course of negotiations between a Negotiations Proponent and the Sponsors, the Negotiations Proponent resubmits prices to the Sponsors or agrees to revised terms and conditions of the Project Agreement or the Negotiations Proponent's Proposal prior to the expiration of the Proposal Validity Period, that Negotiations Proponent is deemed to have agreed to an extension of the Proposal Validity Period for the Negotiations Proponent's amended Proposal for a period of 95 calendar days after the date of the Proponent's submission to the Sponsors of the revised prices or revised terms and conditions, as applicable. For clarity, notwithstanding the submission by a Negotiations Proponent or Preferred Proponent of an amended Proposal in accordance with this RFP Section 5.6(3), the Proponent's original Proposal as amended by the application or by RFP Section 5.5, as applicable, continues to exist in accordance with the original Proposal Validity Period.

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

5.7 Lender Requirements

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

- (a) to establish industry standard confidentiality and conflict of interest screens to ensure that each Proponent is represented by a discrete team of Lender personnel;

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

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

SECTION 6 – EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

6.1 Evaluation Committee and Advisors

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

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

6.2 Sponsors' Clarification and Verification of Proposals

- (1) The Sponsors may:

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- (a) require the Proponent to clarify or verify the contents of its Proposal or any statement made by the Proponent or the Qualified IC;
- (b) require the Proponent or the Qualified IC to submit supplementary documentation clarifying or verifying any matters contained in its Proposal or the IC Offer, respectively;
- (c) seek a Proponent's acknowledgement of the Sponsors' interpretation of the Proposal or any part of the Proposal;
- (d) require the Proponent to provide estimate information in accordance with RFP Section 6.6 at any time during the RFP Process; and
- (e) require the Proponent to issue and evaluate a competitive procurement for any Costed Element in accordance with RFP Section 6.7 at any time during the RFP Process.

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

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

6.3 Determination of Compliance

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

- (a) any failure in a Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsors:
 - (i) impedes, in any material way, the ability of the Sponsors to evaluate the Proposal; or
 - (ii) 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
 - (iii) constitutes an attempt by the Proponent to revise the Sponsors' or the Proponent's rights or obligations under the Project 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 6.3.

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

- (a) any deviation that is not a Material Deviation at any time; and
- (b) any Material Deviation in accordance with RFP Section 10.2(3).

(4) The Sponsors may identify a Material Deviation in a Proposal at any time during the RFP Process (after the Technical Submission Deadline) and, for clarity, at any step during the evaluation process set out in RFP Section 6.5.

(5) Subject to RFP Section 6.3(3)(b), if the Sponsors determine that a Proposal is non-compliant in accordance with RFP Section 6.3, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare that the Proposal shall not be given any further consideration and take such action as permitted under RFP Section 7.1.2. If a declaration by the Sponsors that a Proposal is non-compliant occurs after the commencement of the assignment of evaluation outcomes, the weightings or the scoring of that Proposal, any evaluation outcomes, weightings and scores given to that Proposal shall be declared null and void.

6.4 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 6.3(1)(a).

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

(3) The quality of a Proposal, an assessment of which is made during the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of that Proposal and which is separate and distinct from the assessment of the compliance of a Proposal, may be subject to one or more

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minimum acceptable submission scores in accordance with Part 4 – Proposal Format and Evaluation of Schedule 3 – Submission Requirements and Evaluation Criteria to this RFP.

(4) A Proposal that does not contain any Material Deviations shall not be automatically presumed to be assigned any applicable evaluation outcome or to pass any applicable minimum weighting or scoring threshold set out in Part 4 to Schedule 3 to this RFP. Any assessment of “design compliance”, “design conformance and/or non-conformance”, “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality of a Proposal shall not result in any presumed evaluation outcome, weighting or score for that Proposal.

(5) The submission of a compliant Proposal that contains a poor quality response and/or any failure by a 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 Section 9.2 of this RFP, or of Project Co under the Project Agreement to bring all aspects of a Proponent’s proposed design, construction or financing into conformance with the requirements of the Project Agreement, pursuant to its terms.

6.5 Steps in the Evaluation Process

6.5.1 Step 1 – Compliance of Technical Submissions

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

(2) Following this preliminary review of the Technical Submission, the Sponsors may, in their sole discretion, request and accept any information to rectify non-material errors or deficiencies in a Technical 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 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

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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 Technical 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 6.3.

(9) If the Sponsors identify a Material Deviation in a Technical Submission, then, subject to RFP Section 6.3(3)(b), the Sponsors may determine that the Proposal to which the Technical Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).

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

6.5.2 Step 2 – Review of the Proposal Submission Form (Technical)

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

- (a) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submissions, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.6; and
- (b) assess the Conflict of Interest and Confidential Information sections of the Proposal Submission Form (Technical).

6.5.3 Step 3 – Review and Scoring of the Technical Submissions

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

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(2) If a Proponent fails to achieve any of the minimum acceptable submission scores or minimum aggregate weighting thresholds as set out in the applicable provisions of Part 4 of Schedule 3 to this RFP, 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.

(3) In the event that a Proponent's Technical Submission fails to achieve any of the minimum acceptable submission scores or minimum aggregate weighting thresholds as set out in the applicable provisions of Part 4 of Schedule 3 to this RFP and the Sponsors do not exercise their discretionary rights as set out in Section 6.5.3(2), the Proponent's Proposal will not continue in the evaluation process.

6.5.4 Step 4 – Review of the Proposal Submission Form (Financial)

(1) In Step 4 of the evaluation process, the Sponsors shall review the Proposal Submission Form (Financial) to:

- (a) ensure that there have been no changes to the representations and warranties made by the Proponent in its Proposal Submission Form (Technical);
- (b) ensure that there have been no changes to the Proponent or Proponent Team Members from their Prequalification Submissions following the Technical Submission Deadline, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.6; and
- (c) assess the Conflict of Interest and Confidential Information sections of the Proposal Submission Form (Financial).

(2) For greater certainty, the Sponsors may commence Step 4 of this evaluation process at any time following the Financial Submission Deadline, including prior to the conclusion of an earlier Step in this evaluation process.

6.5.5 Step 5 – Compliance of Financial Submissions

(1) In Step 5 of the evaluation process, the Sponsors will open each Financial Submission and will review the contents of the Financial Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.

(2) Following this preliminary review of the Financial Submission, the Sponsors may, in their sole discretion, request and accept any information to rectify non-material errors or deficiencies in a Financial 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.

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(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 6 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 6 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 5 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 Financial 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 6.3.

(9) If the Sponsors identify a Material Deviation in a Financial Submission then, subject to RFP Section 6.3(3)(b), the Sponsors may determine that the Proposal to which the Financial Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).

6.5.6 Step 6 – Affordability Review

(1) In Step 6 of the evaluation process, the Sponsors shall review each Proposal to determine whether or not it is Affordable (the “**Affordability Review**”).

(2) If the Proposal that is submitted is Affordable (an “**Affordable Proposal**”), then such Affordable Proposal shall be evaluated and scored in Step 7 of the evaluation process in accordance with Parts 2 – Financial Submission Requirements and 4 – Proposal Format and Evaluation of Schedule 3 to this RFP, and may be scored and ranked in Steps 8 and 9 of the evaluation process. If the Proposal that is submitted is Unaffordable (an “**Unaffordable Proposal**”):

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- (a) the Financial Submission of the Unaffordable Proposal shall not be evaluated and scored in Steps 7 and 8 of the evaluation process, and shall not proceed to Step 9 of the evaluation process, and a Proponent who submitted an Unaffordable Proposal shall not be capable of being ranked or identified by the Sponsors as a Preferred Proponent or Negotiations Proponent in Section 8.1(1) of this RFP, and
- (b) a Break Fee shall not be payable by the Sponsors to the Proponent in respect of such Unaffordable Proposal pursuant to RFP Section 10.3.

6.5.7 Step 7 – Review and Scoring of the Financial Submissions

(1) In Step 7 of the evaluation process, the Financial Submissions as revised by RFP Section 5.5(2), as applicable, will be evaluated and scored in accordance with Parts 2 – Financial Submission Requirements and 4 – Proposal Format and Evaluation of Schedule 3 to this RFP.

(2) If a Proponent fails to achieve any of the minimum acceptable submission scores or fails to have in place the approval(s) required for its Proposal to have committed financing as set out in the applicable provisions of Part 4 of Schedule 3 to this RFP, then, as part of Step 7 of the evaluation process and pursuant to and in accordance with such provisions, the Sponsors may, in their sole discretion, determine whether that Proponent’s Proposal will continue to be considered in the RFP Process.

(3) In the event that a Proponent’s Financial Submission fails to achieve any of the minimum acceptable submission scores as set out in the applicable provisions of Part 4 of Schedule 3 to this RFP and the Sponsors do not exercise their discretionary rights as set out in Section 6.5.7(2), the Proponent’s Proposal will not continue to Step 7 of the evaluation process.

6.5.8 Step 8 – Establishing a Final Proposal Score

(1) For the purpose of the evaluation process, the weightings and scoring set out in Part 4 of Schedule 3 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 based on RFP Section 6.5.8 shall be the “**Final Proposal Score**”.

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6.5.9 Step 9 – Ranking the Proponents

(1) In Step 9 of the evaluation process, the Evaluation Committee shall rank only those Proponents that have met all requirements in 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 Proposal Score between two Proponents the Sponsors may, in their sole discretion, give the higher ranking to the Proponent proposing the lower Guaranteed Price in its Proposal.

6.6 Estimate Information

(1) With respect to each element of the Indicative Pricing Submittals and the Proposal (each a “**Costed Element**”), the Sponsors may require the Proponent to deliver evidence to the Sponsors demonstrating to the Sponsor’s reasonable satisfaction that the Proponent has used commercially reasonable efforts to obtain the best value for money in respect of all work, services, supplies, materials and equipment required by the Costed Element, including to minimize any and all price contingencies and by applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and complying with all Good Industry Practice in relation to any procurement of any work, services, supplies, materials or equipment required by the Costed Element, to a standard no less than the Proponent would apply if all costs and expenses (including contingencies) were to be incurred on its own account without recourse to the Sponsors. Also, to the extent any such procurement resulted in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, the Proponent shall provide the Sponsors sufficient information and analysis to demonstrate to the Sponsor’s satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Costed Element.

(2) The Proponent shall deliver all evidence required by RFP Section 6.6(1) to the Sponsors within 10 Business Days of a request from the Sponsors in accordance with RFP Section 6.6(1). In the event that the Sponsors do not agree that the Proponent has provided evidence demonstrating the matters set out in RFP Section 6.6(1), the Sponsors may require the Proponent to take additional measures to ensure that it complies with the requirements of RFP Section 6.6(1). The Sponsors shall not have any right to require the Proponent to modify its price as provided in the Proposal, or otherwise, as a result of any review undertaken pursuant to this RFP Section 6.6, provided however, that disclosure made in connection with this RFP Section 6.6 and any failure of the Proponent to comply with the provisions of this RFP Section 6.6 may otherwise be considered by the Sponsors, in the context of the Sponsor’s review of the Indicative Pricing Submittals and the Proposal and may result in the Proponent being unable to demonstrate that it has been an active participant throughout the RFP Process for purposes of determining the Proponent’s eligibility for a Proposal Submission Fee Advance Payment pursuant to Section 10.3.2(2)(a).

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6.7 Proponent Competitive Procurement of Costed Element

(1) At the request of the Sponsors, the Proponent shall, in good faith, issue and evaluate a competitive procurement for any Costed Element. The Proponent is not required, for the purposes of its Indicative Pricing Submittals or Proposal, to accept any particular, or any response to any, competitive procurement required pursuant to this RFP Section 6.7.

(2) In the event the Proponent incorporates a price which is higher than the amount of the lowest priced proposal for a Costed Element that has been the subject of a competitive procurement pursuant to RFP Section 6.7(1), or otherwise, into its pricing included in its Financial Submission, the Proponent shall include with its Proposal detailed reasons for its decision to carry such higher price for such Costed Element.

(3) The Proponent acknowledges that the Sponsors may, at any time, elect to run a competitive public procurement in respect of a Costed Element and may, by Addenda, in accordance with RFP Section 8.1(2), or otherwise, revise the scope of the Project or the scope of the Project Agreement accordingly.

SECTION 7 – GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

- (1) The Sponsors shall, in their sole discretion, determine:
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether a Proposal is compliant with the RFP Documents;
 - (c) whether a failure to comply constitutes a Material Deviation;
 - (d) whether Key Individuals who were not named in a Prequalification Submission are acceptable 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.

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(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.

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

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

(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.

7.1.2 Disqualification

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

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3.
- (b) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its Proposal or interview;
- (c) the Proponent contravenes RFP Section 3.3.2 or RFP Section 3.3.3;
- (d) the Proponent fails to comply with Applicable Law;
- (e) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;
- (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates are a Restricted Person or a Restricted Person as defined in subparagraph (a)(i) of the definition of Restricted Person has, directly or indirectly, an Economic Interest in any of them;

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- (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 in connection with this RFP) that would materially adversely affect the Sponsors' evaluation of the Proposal;
- (i) the Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Proponent,
 - (i) does not receive a waiver from the Sponsors in accordance with RFP Section 3.9.1(6) or does not receive a consent in accordance with RFP Section 3.9.2(4), as applicable; or
 - (ii) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
- (j) in the 12 months prior to the Financial Submission Deadline, the Sponsors became aware that the Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor, unless the Proponent has demonstrated to the satisfaction of the Sponsors that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (k) in the opinion of the Sponsors, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section 3.3.4;
- (l) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (m) the Proponent or any Proponent Team Member has been convicted of an offence in connection with, or any services rendered to the Sponsors or any Ministry, agency, Board or Commission of the Government of Ontario;
- (n) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or

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- (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.

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

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

- (1) Based on the Final Proposal Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the Proposal Validity Period:
 - (a) identify the highest ranked Proponent as the Preferred Proponent and either negotiate with such Proponent or accept such Proponent's 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 Project Agreement, or both, including, for greater clarity, any amendments to the Project Agreement that are reasonably required to:
 - (a) accommodate a Negotiations Proponents' financing arrangements;

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- (b) revise the scope of the Project in the event that all Proposal prices have exceeded the Sponsors' Project budget;
 - (c) ensure that a Negotiations Proponent's Proposed Works Schedule and Interim Works Schedule meet the applicable requirements set out in the Project Agreement, including Schedule 19 – Works Scheduling Requirements of the Project Agreement; and/or
 - (d) satisfy the Sponsors with respect to the current status of a Negotiations Proponents' health and safety certifications, provided in accordance with RFP Schedule 3 – Part 1.
- (3) As part of such negotiations, the Sponsors may:
- (a) issue a Call-up pursuant to the Standing Offer Agreement so that the terms of the IC Offer of the Qualified IC selected by the Preferred Proponent are incorporated into the Independent Certifier Agreement;
 - (b) negotiate any term or provision of the IC Offer of the Qualified IC selected by a Negotiations Proponent directly with the Qualified IC, including the scope of the independent certifier services to be provided, the individuals who will be providing such services and the prices of such services and if such negotiations are successful and such Negotiations Proponent becomes the Preferred Proponent, issue a Call-up pursuant to the Standing Offer Agreement so that the terms of the revised IC Offer of the Qualified IC are incorporated into the Independent Certifier Agreement; or
 - (c) reject the Qualified IC and the IC Offer of a Negotiations Proponent in its entirety by giving written notice to that effect to such Negotiations Proponent and if so:
 - (i) such Negotiations Proponent may offer to the Sponsors another Qualified IC with an IC Offer acceptable to the Sponsors in their sole discretion, within seven days of the giving of such written notice; failing which,
 - (ii) the Sponsors shall select an Independent Certifier in consultation with the Preferred Proponent in accordance with the process described in Section 4.1(2)(a) of this RFP.
 - (d) If the Preferred Proponent does not submit an IC Offer as part of its Financial Submission, the Independent Certifier for the Project will be selected as set out in Section 4.1(2)(a) of this RFP.

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

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

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

8.2 Appointment of the CDB

(1) As soon as possible following the date the Sponsors identify a Proponent as a Negotiations Proponent or the Preferred Proponent pursuant to RFP Section 8.1(1) and, in any event, by no later than 30 days following such date, the Sponsors and the Proponent shall agree to the identity of the Member in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure of the Project Agreement.

(2) Each of the Proponent and the Sponsors shall deliver the CDB Member Statement and the CDB Member Agreement for the Member in accordance with, as applicable, Section 1 or Section 2 of Schedule 2 – Completion Documents of the Project Agreement, such that the Member is appointed and the CDB is constituted on the date the documents described in such Sections are released from escrow pursuant to the Escrow Closing Procedures Agreement.

8.3 Early Contractor Activities

(1) Following Financial Close, rapid progress on the Project is of paramount importance to the Sponsors. To that end, the First Negotiations Proponent, or Second Negotiations Proponent in the event that the Sponsors enter into negotiations with the Second Negotiations Proponent pursuant to Section 8.1(1) of this RFP, (the “**Relevant Negotiations Proponent**”), is permitted to undertake and perform certain activities forming part of the Works at its own cost and expense (subject to the provisions of the Early Works Agreement), between the date upon which the Relevant Negotiations Proponent is so identified by the Sponsors, and Financial Close (the “**Pre-Closing Period**”) provided that the Relevant Negotiations Proponent enters into the Early Works Agreement with Contracting Authority, the form of which is attached as Appendix A – Form of Early Works Agreement to this RFP. The activities forming part of the Works that the Relevant Negotiations Proponent may undertake and perform during the Pre-Closing Period are described in the Early Works Agreement (the “**Early Contractor Activities**”). For greater certainty:

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- (a) the Early Contractor Activities constitute part of the Works;
 - (b) there shall only be one Relevant Negotiations Proponent at any given point in time;
 - (c) the Relevant Negotiations Proponent includes the Preferred Proponent; and
 - (d) while the Relevant Negotiations Proponent is strongly encouraged to undertake the Early Contractor Activities during the Pre-Closing Period, the decision of whether or not to undertake the Early Contractor Activities during the Pre-Closing Period shall be at the sole option or election of the Relevant Negotiations Proponent.
- (2) The Relevant Negotiations Proponent shall:
- (a) subject to the provisions of the Early Works Agreement, be solely responsible for all costs and expenses (including any financing costs) incurred by the Relevant Negotiations Proponent in performing the Early Contractor Activities (the “**Early Contractor Costs**”); and
 - (b) ensure that the Financial Model reflects the costs and expenses of performing the Early Contractor Activities, whether performed during the Pre-Closing Period or following Financial Close. For clarity, the amount of all Early Contractor Costs incurred by the Relevant Negotiations Proponent shall form part of the Guaranteed Price.
- (3) The Relevant Negotiations Proponent shall not have access to any portion of the Lands which are not the Early Works Lands during the Pre-Closing Period.
- (4) Where the Relevant 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 Relevant 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 Project Agreement following Financial Close.

8.4 Early Permitting Activities

- (1) Proponents are permitted to undertake and perform activities relating to Project Co Permits, Licences, Approvals and Agreements at its sole risk, cost and expense at any time during the RFP Process (the “**Early Permitting Activities**”). For greater certainty:
- (a) Early Permitting Activities constitute part of the Works; and

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- (b) Early Permitting Activities shall be excluded from Early Contractor Activities and the Proponent shall not be entitled to reimbursement of any costs incurred in performing the Early Permitting Activities pursuant to the Early Works Agreement.

SECTION 9 – PREFERRED PROPONENT

9.1 Identification of the Preferred Proponent and the Letter of Credit

(1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify a Preferred Proponent in accordance with RFP Section 8.1(1) or RFP Section 5.5(6).

(2) No later than three (3) Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, the Preferred Proponent shall provide an irrevocable standby letter of credit (the "**Letter of Credit**") in the amount specified in the RFP Data Sheet and in the form attached as Schedule 8A to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5) and Project Co's (as defined in the Project Agreement) obligations in accordance with Section 2.3(c) of the Project Agreement. The Preferred Proponent may, with the prior written consent of the Sponsors, which consent may be withheld in the sole discretion of the Sponsors, provide multiple irrevocable standby letters of credit from Proponent Team Members as approved and confirmed by the Sponsors (each a "**Letter of Credit Provider**") totalling the amount specified in the RFP Data Sheet and in the form attached as Schedule 8A to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5) and Project Co's (as defined in the Project Agreement) obligations in accordance with Section 2.3(c) of the Project Agreement.

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

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

- (a) if the Sponsors give notice to the Preferred Proponent that they are cancelling the RFP Process, no later than 10 days after receipt by the Sponsors of a written demand for the Letter(s) of Credit by the Preferred Proponent; or
- (b) if Commercial Close has been achieved, in accordance with the terms of the Project Agreement.

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

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

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

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

- (a) the Sponsors may draw upon any Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
- (b) the Sponsors may draw on any Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider's contribution to security;

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- (c) the Sponsors may draw upon any Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Proponent Team Member; and
- (d) the provision of multiple Letters of Credit shall not in any way prejudice or adversely affect the rights of the Sponsors to draw on any Letter of Credit in accordance with this RFP, including in the event that the Sponsors are entitled to draw on the Letter(s) of Credit in accordance with RFP Section 9.1(5) and such circumstance is not the result of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

9.2 Preferred Proponent Obligations

- (1) The Preferred Proponent shall,
 - (a) provide drafts of each document set out in Section 1 of Schedule 2 - Completion Documents of the Project Agreement, to the Sponsors at least 30 days prior to the Financial Close Target Date;
 - (b) achieve Commercial Close,
 - (i) prior to the Commercial Close Target Date; or
 - (ii) if the Commercial Close Target Date has passed and the Sponsors have given their consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable)

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

 - (c) execute the Project Agreement, subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require,
 - (A) the insertion or addition of information relating to the Preferred Proponent's corporate and funding structure which are not inconsistent with the principles set out in the Project Agreement;

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- (B) the insertion or addition of information or the modification of provisions of the Project Agreement required in order to reflect accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or
- (C) the revision of provisions in the Project Agreement to more accurately reflect the result of negotiations in accordance with RFP Section 8.1;
- (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Project Agreement (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Project Agreement; and
- (iv) changes, additions and modifications to those parts of the Project Agreement which are indicated in the Project Agreement as being subject to completion or finalization,

provided, that, in each case the changes, additions or modifications identified in RFP Section 9.2(1)(c) are consistent with the principles set out in the Project Agreement are otherwise acceptable to the Sponsors, acting reasonably and are consistent with RFP Section 9.2(4);

- (d) maintain its prices in accordance with the terms and conditions of this RFP, subject only to (i) revisions to the Credit Spread(s), if any, in accordance with, as applicable, RFP Section 5.5(3) or 5.5(3.1); and (ii) revisions to the price explicitly agreed to by the Sponsors;
- (e) if applicable, no later than five Business Days following receipt of notice from the Sponsors that it is the Preferred Proponent, submit to the Sponsors for their review the updated Proposed Works Schedule and Interim Works Schedule that each reflect the outcome of the negotiations conducted pursuant to RFP Section 8.1(2)(c); and
- (f) at least two Business Days before Commercial Close, execute an escrow closing procedure agreement with Contracting Authority and the other parties thereto substantially in the form set out in Schedule 7 – Form of Escrow Closing Procedure Agreement to this RFP (the “**Escrow Closing Procedures Agreement**”). The Preferred Proponent shall be responsible for causing all parties to such agreement other than Contracting Authority and the Escrow Agent (as defined in Schedule 7 – Form of Escrow Closing Procedure Agreement to this RFP) to enter into such agreement.

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

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

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

(3) The Preferred Proponent shall provide access and shall promptly make available to the Sponsors and their Advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by the Sponsors from time to time in connection with the Sponsors’ due diligence investigations. The Preferred Proponent shall provide to the Sponsors, in a timely fashion, final draft versions of all documents required to be delivered by the Preferred Proponent in accordance with the Project Agreement, together with such other documentation as the Sponsors may reasonably request from time to time.

(4) The Preferred Proponent acknowledges and agrees that:

- (a) further to RFP Section 5.4(1), the Sponsors, in their sole discretion, may incorporate certain parts of its Proposal into the Project Agreement as Project Co Proposal Extracts. Notwithstanding the foregoing, the Sponsors shall act reasonably in incorporating any specific part of the Proposal into the Project Co Proposal Extracts where the Preferred Proponent demonstrates to the Sponsors that incorporating such part of the Proposal into the Project Co Proposal Extracts (“**Specific Proposal Part**”) without also incorporating a related specific part(s) of the Proposal into the Project Co Proposal Extracts will (i) materially adversely change the intent, or materially prejudice the interpretation, of the Specific Proposal Part or the Project Agreement, as contemplated by the Proposal; or (ii) otherwise materially adversely affect the performance of the Works by Project Co under the Project Agreement; and
- (b) save and except for any Project Co Proposal Extracts, on Commercial Close, the RFP Documents and its Proposal will be superseded entirely by the Project Agreement and rendered null and void in accordance with Section 1.1(d) of the Project Agreement.

9.3 The Sponsors Authorization and Approvals

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

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

10.1 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion:
 - (a) reject any or all of the Proposals;
 - (b) reject the Key Individuals proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
 - (c) reject the financing plan contained in a Proposal and thereby reject the Proposal;
 - (d) request a replacement financing plan if the financing plan contained in the Proposal is, in the opinion of the Sponsors, uncompetitive or incomplete, or both;
 - (e) accept any Proposal;
 - (f) if only one Proposal is received, elect to accept or reject it or enter into negotiations with the Proponent;
 - (g) 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 Commercial Close;
 - (h) alter the Timetable, the RFP Process or any other aspect of this RFP; and
 - (i) cancel the RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants.

(2) Each Proponent Team Member of any Proponent is required to provide a certificate of an officer from such Proponent Team Member in the form attached as Schedule 5A – Certificate of Officer to this RFP;

(3) Each Construction Prime 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 5B- Accounting Firm Letter, from a professional accounting and advisory firm that is reputable in the

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applicable jurisdiction with expertise in forensic reviews dated no earlier than two years prior to the date of the issuance of the RFP.

(4) 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 an officer from such Proponent Team Member in the form attached as Schedule 5A – Certificate of Officer to this RFP, or may require any Construction Prime Team Member of any Proponent to provide or resubmit an accounting firm letter in the form attached as Schedule 5B – Accounting Firm Letter for itself and, if it is a joint venture, for each joint venture party to this RFP.

(5) 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.

(6) If a financial institution put forward as a Proponent Team Member and acting in a financial advisory capacity is not an Affiliate of any of the Proponent Team Members of the Proponent (“**Exempt Financial Institution**”), then RFP Sections 10.1(2) and 10.1(5) shall not apply to any such Exempt Financial Institution.

(7) Further to RFP Sections 10.1(2) and 10.1(5), and in the event that any Proponent and/or Proponent Team Member:

- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to RFP Section 10.1(2) or RFP Section 10.1(5); or
- (b) complies with Sponsors’ requirement as prescribed in accordance with RFP Section 10.1(2) or RFP Section 10.1(5), 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

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any Proponent Team Member pursuant to RFP Section 3.6 or to otherwise elect not to proceed further in the procurement process with such Proponent.

10.2 Special Circumstances

(1) If the Sponsors determine that all of the Proposals submitted are non-compliant in accordance with RFP Section 6.3, the Sponsors may, in their sole discretion:

- (a) take any action in accordance with RFP Section 10.1;
- (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their Proposals for re-submission, without a change in their Guaranteed Prices (as set out in the Guaranteed Price Form) or their Works Schedule; or
- (c) enter into negotiations with any one of the Proponents to attempt to finalize an agreement.

(2) If the Sponsors receive,

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

the Sponsors may, in their sole discretion:

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

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

(4) If at any time prior to the Technical Submission Deadline, any Proponent withdraws or is disqualified from the RFP Process, the Sponsors may, in their sole discretion, invite the next highest-ranked party under the RFQ process that preceded this RFP other than the Proponents (the “**Reserve Prequalified Party**”) to participate in the RFP Process in place of the withdrawn or disqualified Proponent. For clarity, the Reserve Prequalified Party must have submitted a complete Prequalification Submission in accordance with the terms and conditions of the RFQ, and achieved the minimum score required by RFQ Section 5.2(2) of the RFQ and satisfied any other conditions imposed by the Sponsors. Upon the Reserve Prequalified Party’s written acceptance of such invitation, the Reserve Prequalified Party shall become a Prequalified Party and a Proponent under this RFP.

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10.3 Sponsors' Liability for Proponent's Costs

10.3.1 General

(1) Except as provided in RFP Sections 10.3.2 and 10.3.3, none of the Sponsors and the Government of Ontario shall be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Advisor to the Proponent or any person connected with any one of them, as a result of any action taken by the Sponsors in accordance with RFP Sections 10.1 or 10.2.

10.3.2 Proposal Submission Fee

(1) Subject to the provisions of this RFP Section 10.3.2, the Sponsors shall pay a Proposal Submission Fee, plus any applicable HST, to each Proponent, payable in the amounts and at the times as provided for in the RFP Data Sheet.

(2) Subject to RFP Section 10.3.2(9), in order to be eligible to receive a Proposal Submission Fee Advance Payment,

- (a) the Proponent must participate fully (including providing the requested submissions) in Project Agreement CCMs, Design Workshops, Topic Meetings and other consultations occurring prior to a Proposal Submission Fee Advance Payment milestone and provide all submissions required or requested pursuant to this RFP which are due on or before the applicable Proposal Submission Fee Advance Payment milestone;
- (b) when determining whether the Proponent has met the conditions set out in RFP Section 10.3.2(2)(a), the Sponsors shall act reasonably; and
- (c) the Proponent must comply fully with RFP Sections 3.3.2, 3.3.3, 3.3.4 and 3.8.3, and the provisions of any confidentiality agreement entered into in connection with the RFP Process.

(3) Subject to RFP Section 10.3.2(9), in order to be eligible to receive any Proposal Submission Fee Payment, a Proponent must:

- (a) submit a Technical Submission that is determined to be compliant pursuant to this RFP and that achieves all of the minimum acceptable submission scores and minimum aggregate weighting thresholds as set out in the applicable provisions of Part 4 of Schedule 3 to this RFP; and
- (b) not withdraw from this RFP Process after the Technical Submission Deadline in contravention of this RFP.

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(4) In order to be eligible to receive the Affordable Proposal Submission Fee Payment or the Final Proposal Submission Fee Payment, the Proponent must submit a full and proper Affordable Proposal, provided that the Sponsors shall determine whether a Proposal is full, proper and Affordable based on factors that include whether the Proposal is compliant with this RFP (as determined in accordance with RFP Section 6.3) and whether the Technical Submission Elements in the Proposal received a “satisfactory” evaluation outcome pursuant to Part 4 of Schedule 3 of this RFP.

(5) The Sponsors and the Preferred Proponent must achieve Commercial Close in order for the Proponent to be entitled to receive the Final Proposal Submission Fee Payment.

(6) The Sponsors’ obligation to pay any Proposal Submission Fee Advance Payment and any Proposal Submission Fee Payment shall be contingent on the receipt of an executed release from the Proponent and Proponent Team Members in the form set out in the RFP Data Sheet (a “**Release**”) and an invoice corresponding to the applicable Proposal Submission Fee Advance Payments and Proposal Submission Fee Payments in accordance with the requirements set out in the RFP Data Sheet (an “**Invoice**”). Such Release and Invoice shall be delivered to the Sponsors no later than 20 Business Days prior to the Proposal Submission Fee Payment Date. Any Proposal Submission Fee Advance Payment and Proposal Submission Fee Payment paid pursuant to this RFP Section 10.3.2 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 for the time period up until the date of the Release.

(7) If the RFP Process is cancelled at any time, a Proponent is entitled to receive and retain those Proposal Submission Fee Advance Payments and Proposal Submission Fee Payments that have been paid or are payable to the Proponent prior to the date of the cancellation in accordance with this RFP Section 10.3.2.

(8) If the Proponent fails to successfully submit a Proposal that meets the requirements of RFP Section 10.3.2(3)(a), such Proponent may receive and retain any Proposal Submission Fee Advance Payments that are payable to the Proponent pursuant to this RFP Section 10.3.2, but the Proponent is not eligible for any Proposal Submission Fee Payments.

(9) If a Proposal Submission Fee Advance Payment is not payable to a Proponent as a result of the Proponent failing to satisfy the requirements set out in RFP Section 10.3.2(2)(a) and the Proponent submits a Proposal that meets the requirements of RFP Section 10.3.2(3), such Proposal Submission Fee Advance Payment shall become payable on the Proposal Submission Fee Payment Date.

10.3.3 Break Fee

(1) Any Break Fee that is offered by the Sponsors for the Project shall be set out in the RFP Data Sheet and, subject to RFP Section 10.3.3(5), shall only be paid by the Sponsors when the Sponsors have been satisfied that:

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- (a) the Proponent has demonstrated that it has been an active participant throughout 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 to that effect.

(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 Submission Fee as well. For greater certainty, a Proponent shall not be eligible to receive both a Break Fee and a Proposal Submission 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.

10.4 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

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- (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 10.4.

(3) Except as provided in RFP Sections 10.3.2 and 10.3.3, the Proponent agrees that if the Sponsors or the Sponsors' Advisors commit a material breach of their obligations under or in connection with this RFP (that is, a material breach of the bidding contract or Contract A), the Sponsors' liability to the Proponent and the aggregate amount of damages recoverable against the Sponsors for any matter relating to or arising from that material breach, whether based upon an action or claim in contract, warranty, equity, negligence, intended conduct or otherwise, including any action or claim arising from the acts or omissions, negligent or otherwise, of the Sponsors, shall be the lesser of,

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

10.5 Licenses, Permits, etc.

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

10.6 Power of Legislative Assembly

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

SECTION 11 – NOTIFICATION AND DEBRIEFING

(1) Any time after the Preferred Proponent has been identified, the Sponsors will formally notify all Proponents who were not successful in the RFP Process that they have not been selected. Notwithstanding such notification, the Proponents' Proposals shall be irrevocable until the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) or Financial Close, in accordance with RFP Section 5.4.

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

SECTION 12 – DEFINITIONS

12.1 General

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

(2) Any reference in this RFP to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.

(3) 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.

12.2 RFP Definitions

Whenever used in the RFP:

(1) “Acquiree” is defined in RFP Section 3.6(9);

(2) “Acquirer” is defined in RFP Section 3.6(9);

(3) “Addendum” means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7;

(4) “Ad Hoc Meetings” is defined in Schedule 2 – Proponent Consultation Process to this RFP;

(5) “Advisor” means any person or firm retained to provide professional advice to any one of the Sponsors, a Proponent, a Proponent Team Member or a Financial Services Provider, as applicable;

(6) “Affiliate” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;

(7) “Affordable” means, in respect of a Proposal, that the Affordability Price submitted in the Financial Submission is equal to or less than the Affordability Cap;

(8) “Affordability Cap” has the meaning ascribed thereto in RFP Schedule 3 Part 2;

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- (9) “Affordability Price” means, for each Proponent, the sum of Cost of the Works and Ancillary Costs Related to Construction, as set out in Section D of the Proponent’s Guaranteed Price Form submitted as part of its Proposal;
- (10) “Affordable Proposal” is defined in RFP Section 6.5.6(2);
- (11) “Affordable Proposal Submission Fee Payment” is defined in the RFP Data Sheet.
- (12) “Affordability Review” is defined in RFP Section 6.5.6(1);
- (13) “Alternative Price” is a price requested by the Sponsors, or proposed by a Proponent, for meeting a RFP requirement in an alternative manner or method that may affect the Guaranteed Price and must not extend the Proposed Works Schedule;
- (14) “Alternative Price Submission” is defined in Part 3 of Schedule 3 of this RFP;
- (15) “Alternative Price Submission Form” is the form attached as Table 1 to Appendix 1 of Part 3 of Schedule 3 to this RFP.
- (16) “Ancillary Costs Related to Construction” means the total amount reported under Section 1 (Other Ancillary Costs related to construction) of Part 2 – Financing Cost Breakdown Form of the Proponent’s Guaranteed Price Breakdown Forms;
- (17) “Benchmark Rate(s)” is defined in Part B of Part 2 of Schedule 3 to this RFP;
- (18) “Benchmarking Date” is defined in Part B of Part 2 of Schedule 3 to this RFP;
- (19) “Bonding Submission” is defined in RFP Section 4.2.1(2).
- (20) “Break Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal in the event that the RFP Process is cancelled, as determined by the Sponsors in accordance with RFP Section 10.3.3;
- (21) “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;
- (22) “Call-up” means a call-up issued by the Sponsors to a Qualified IC pursuant to the Standing Offer Agreement with that Qualified IC;
- (23) “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

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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;

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

(25) “Client” is defined in RFP Section 1.1(1);

(26) “Commercial Close” means the date the Project Agreement is signed by the Preferred Proponent and the Signing Parties;

(27) “Commercial Close Target Date” means the date set out as the Commercial Close Target Date in the Timetable;

(28) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);

(29) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);

(30) “Confidential Information” is defined in RFP Section 3.8.3(1);

(31) “Conflict of Interest” is defined in RFP Section 3.9.1(7);

(32) “Construction Prime Team Member” is defined in the RFQ;

(33) “Consultation Sessions” is defined in Schedule 2 – Proponent Consultation Process to this RFP;

(34) “Contact Person” is defined in RFP Section 3.2.1;

(35) “Contract A” is defined in RFP Section 1.1(3);

(36) “Contracting Authority” is defined in RFP Section 1.1(1);

(37) “Costed Element” is defined in RFP Section 6.6(1);

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- (38) “Credit Spread Election Facilities” is defined in RFP Section 5.5(1)(b)(i);
- (39) “Credit Spread Rectification Notice” is defined in RFP Section 5.5(6)(a);
- (40) “Credit Spread Rectification Notice Response” is defined in RFP Section 5.5(6)(a);
- (41) “Credit Spread(s)” means the financing premiums/spreads in excess of the Benchmark Rate as calculated/illustrated in the Financial Model in accordance with Section 3.0 of Table A of Part B of Part 2 of Schedule 3 to this RFP. For greater certainty, Credit Spread(s) do not include any hedge premiums, swap counterparty spreads or any other applicable fees;
- (42) “Data Room” is defined in RFP Section 2.4(1);
- (43) “DBF” is defined in Schedule 1 to this RFP;
- (44) “Design and Schedule Submission Elements” is defined in Section 3.1(a)(ii) of Schedule 3, Part 4 of this RFP.
- (45) “Design Workshop” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (46) “Draft Lenders Commitment Letter” is defined in RFP Section 5.5(5);
- (47) “Early Contractor Activities” is defined in RFP Section 8.3(1);
- (48) “Early Contractor Costs” is defined in RFP Section 8.3(2)(a);
- (49) “Early Permitting Activities” is defined in RFP Section 8.4(1);
- (50) “Early Works Agreement” means the early works agreement in respect of the Early Contractor Activities, entered into between Contracting Authority, the Relevant Negotiations Proponent and the Construction Contractor, the form of which is attached as Appendix B – Form of Early Works Agreement to this RFP;
- (51) “Early Works Lands” has the meaning given in the Early Works Agreement;
- (52) “Economic Interest” has the meaning given in the Project Agreement;
- (53) “Electronic Submission and Evaluation System” means the electronic tendering software named AWARD® by Commerce Decisions®;
- (54) “Escrow Closing Procedure Agreement” is defined in RFP Section 9.2(1)(f);
- (55) “Evaluation Committee” is defined in RFP Section 6.1;

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- (56) “Exempt Financial Institution” is defined in RFP Section 10.1(6);
- (57) “Existing Facilities” are those facilities, if any, listed as Existing Facilities in the RFP Data Sheet;
- (58) “Existing Facilities Site Visits” is defined in RFP Section 3.5.1(1);
- (59) “Facility” has the meaning given in the Project Agreement;
- (60) “Fairness Monitor” is defined in the RFP Data Sheet;
- (61) “Final Credit Spread Election Facilities” is defined in RFP Section 5.5(2)(e);
- (62) “Final Credit Spread Lock-in Date” is defined in RFP Section 5.5(3);
- (63) “Final Proposal Score” is defined in RFP Section 6.5.8(3);
- (64) “Final Proposal Submission Fee Payment” is defined in the RFP Data Sheet.
- (65) “Financial Close” has the meaning given in the Project Agreement;
- (66) “Financial Model” means the computer model a Proponent has used and which is proposed to become the Financial Model under the Project Agreement in the format specified in Part 2 of Schedule 3 to this RFP;
- (67) “Financial RFI” is defined in RFP Section 3.2.2(1)(a)(iii);
- (68) “Financial Services Provider” means any Lender and any other provider of financial services or products;
- (69) “Financial Submission” is defined in RFP Section 4.1(5)(b);
- (70) “Financial Submission Deadline” is defined in RFP Section 3.1(1);
- (71) “Financial Submission Information” means the component of the Proposal submitted in response to the requirements set out in Part 2 of Schedule 3 to this RFP;
- (72) “Financing Timetable” is defined in RFP Section 9.2(2);
- (73) “FIPPA” is defined in RFP Section 3.8.1(1);
- (74) “First Credit Spread Lock-in Date” is defined in RFP Section 5.5(2);
- (75) “First Negotiations Proponent” is defined in RFP Section 8.1(1)(b);

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- (76) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);
- (77) “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;
- (78) “Guaranteed Price Breakdown Forms” means the guaranteed price breakdown forms submitted by a Proponent as part of its Proposal in the forms attached as Appendix B to Schedule 6 – Guaranteed Price Breakdown Forms to this RFP, including Part 1: Uniform Pricing Form and Part 2: Financing Cost Breakdown Form;
- (79) “Guaranteed Price Form” means the guaranteed price form submitted by a Proponent as part of its Proposal in the form attached as Schedule 6 – Guaranteed Price Form to this RFP;
- (80) “Held Pricing Facilities” is defined in RFP Section 5.5(1)(b)(ii);
- (81) “IC Offer” is defined in Section 4.1(1)(b);
- (82) “Identified Proponent Parties” is defined in RFP Section 3.6(1);
- (83) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (84) “Indicative Credit Spread Benchmark(s)” is defined in Section 2.6 of Part D of Part 2 of Schedule 3 to this RFP;
- (85) “Indicative Pricing Submissions” means the Proponent’s draft Guaranteed Price Form and draft Guaranteed Price Breakdown Forms;
- (86) “Ineligible Person’s Affiliate” is defined in RFP Section 3.9.2(1);
- (87) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (88) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (89) “IO” is defined in RFP Section 1.1(1);
- (90) “Investment Canada Act” means the *Investment Canada Act*, R.S.C. 1985, c.28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time;
- (91) “Invoice” is defined in RFP Section 10.3.2(6).
- (92) “IOCIP” is defined in RFP Section 3.11.3(1);
- (93) “IOCIP Broker of Record” means Aon Reed Stenhouse Inc.;

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- (94) “IPFP Framework” is defined in RFP Section 1.1(5);
- (95) “Key Individual” means those individuals identified in the Proponent’s Prequalification Submission as key individuals;
- (96) “Lenders” means the lenders providing the debt financing for the sole purpose of the Project as identified in the term sheet, credit agreement and Lenders Commitment Letter as described in RFP Schedule 3 – Part 2, Part D, Sections 1.1 and 1.2;
- (97) “Lenders Commitment Letter” is defined in RFP Section 5.5(5);
- (98) “Letter of Credit” is defined in RFP Section 9.1(2);
- (99) “Letter of Credit Provider” is defined in RFP Section 9.1(2);
- (100) “MAC” is defined in Section 4.2(a) of Part 4 of Schedule 3 to this RFP;
- (101) “Material Deviation” is defined in RFP Section 6.3(1)(a);
- (102) “Maximum Base Break Fee Amount” is defined in the RFP Data Sheet.
- (103) “Minimum Third Party Financing Threshold” is defined in Section 4.2(f) of Part B of Part 4 of Schedule 3 to this RFP;
- (104) “Ministry” is defined in the RFP Data Sheet;
- (105) “MOI” is defined in RFP Section 1.1(5);
- (106) “Negotiations Proponents” is defined in RFP Section 8.1(1)(b);
- (107) “OILC” is defined in RFP Section 1.1(1);
- (108) “Participating Lender” is defined in RFP Section 5.7(2);
- (109) “Participating Proponent Team Member” is defined in RFP Section 5.7(2);
- (110) “Pre Closing Period” is defined in RFP Section 8.3(1);
- (111) “Preferred Proponent” is defined in RFP Section 1.1(2);
- (112) “Preferred Proponent Design Workshops” is defined in Schedule 2 to this RFP;
- (113) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);
- (114) “Prequalification Submission” is defined in RFP Section 1.2(1);

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(115) “Prequalified Parties” is defined in RFP Section 1.2(1);

(116) “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 Negotiations Proponent or the Preferred 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 section;
- (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this RFP Process; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;

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

(118) “Project Agreement” are those documents listed as the “Project Agreement” in the RFP Data Sheet;

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- (119) “Project Agreement CCMs” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (120) “Project Co” is the Preferred Proponent that has executed the Project Agreement with the Contracting Authority;
- (121) “Proponent” is defined in RFP Section 1.1(2);
- (122) “Proponent Consultation Process” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (123) “Proponent Representative” is defined in RFP Section 1.2(2);
- (124) “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;
- (125) “Proponents Meeting” is defined in RFP Section 3.4.1(1);
- (126) “Proposal” is defined in RFP Section 1.1(2);
- (127) “Proposal Information” is defined in RFP Section 3.8.4(5);
- (128) “Proposal Information Licence” is defined in RFP Section 3.8.4(4);
- (129) “Proposal Submission Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal, as determined by the Sponsors in accordance with RFP Section 10.3.2;
- (130) “Proposal Submission Fee Advance Payment” is defined in the RFP Data Sheet.
- (131) “Proposal Submission Fee Payment” is defined in the RFP Data Sheet.
- (132) “Proposal Submission Fee Payment Date” is defined in the RFP Data Sheet.
- (133) “Proposal Submission Form (Financial)” means the submission form submitted by a Proponent as part of its Proposal in the form attached as Part B – Proposal Submission Form (Financial) to Schedule 4 – Proposal Submission Forms to this RFP;
- (134) “Proposal Submission Form (Technical)” means the submission form submitted by a Proponent as part of its Proposal in the form attached as Part A – Proposal Submission Form (Technical) to Schedule 4 – Proposal Submission Forms to this RFP;
- (135) “Proposal Submission Forms” means, collectively the Proposal Submission Form (Financial) and the Proposal Submission Form (Technical);

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- (136) “Proposal Validity Period” is defined in RFP Section 5.4(1);
- (137) “Proposed Change in Identified Proponent Party” is defined in RFP Section 3.6(3);
- (138) “Qualified IC” is defined in Section 4.1(1);
- (139) “Rectification Notice” is defined in RFP Section 6.5.1(3);
- (140) “Release” is defined in RFP Section 10.3.2(6).
- (141) “Relevant Negotiations Proponent” is defined in RFP Section 8.3(1);
- (142) “Reserve Prequalified Party” is defined in RFP Section 10.2(4);
- (143) “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:
- (a) (i) is subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) 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, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act (Ontario)* or corresponding legislation in any other jurisdiction less than five years prior to the

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date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;

- (e) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act (Ontario)* or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “**Restricted Person**” is made hereunder;
- (f) 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;
- (g) is subject to a material claim of the Sponsors or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Sponsors view, in either case, be reasonably likely materially to affect the ability of the Proponent to perform its obligations under the Project Agreement, if it were to become the successful Proponent under the RFP Process; or
- (h) has a material interest in the production of tobacco products;

(144) “Revised Bonding Submission” is defined in RFP Section 4.2.1(3);

(145) “RFI” is defined in RFP Section 3.2.2(1);

(146) “RFP” is defined in RFP Section 1.1(1);

(147) “RFP Data Sheet” means Schedule 1 to this RFP;

(148) “RFP Documents” is defined in RFP Section 2.1;

(149) “RFP Process” is defined in RFP Section 1.1(3);

(150) “RFQ” is defined in RFP Section 1.2(1);

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- (151) “Scheduled Visits” is defined in RFP Section 3.5.1(1);
- (152) “Second Negotiations Proponent” is defined in RFP Section 8.1(1)(b);
- (153) “Separate Price” is a price requested by the Sponsors for adding scope or functionality that may affect the Guaranteed Price;
- (154) “Separate Price Submission” is defined in Part 3 of Schedule 3 of this RFP;
- (155) “Separate Price Submission Form” is the form attached as Appendix 2 of Part 3 of Schedule 3 to this RFP;
- (156) “Signing Parties” is defined in RFP Section 1.1(7);
- (157) “Site Due Diligence Request Deadline” means the date that is 90 days prior to the Technical Submission Deadline;
- (158) “Site Visits (Non-Existing Facilities)” is defined in RFP Section 3.5.1(1);
- (159) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (160) “Sponsors’ Executive Ad Hoc Meeting” is defined in Schedule 2 – Proponent Consultation Process;
- (161) “Standing Offer Agreement” means a standing offer agreement between the Sponsors and a Qualified IC pursuant to which the Qualified IC has agreed to offer independent certifier services to the Sponsors in respect of projects initiated by the Sponsors;
- (162) “Submission” is defined in Part 3 of Schedule 3 to this RFP;
- (163) “Submission Requirements” means all of the submission requirements set out in this RFP;
- (164) “Summary of Proposal Cost Form” means the Summary of Proposal Cost Form attached as Schedule 10 to this RFP;
- (165) “Surety’s Consent” is defined in RFP Section 4.2.1(1);
- (166) “Technical Reference Date” means the date set out as the Technical Reference Date in the Timetable;
- (167) “Technical Submission” is defined in RFP Section 4.1(5)(a);
- (168) “Technical Submission Deadline” is defined in RFP Section 3.1(1);

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(169) “Technical Submission Elements” is defined in Section 3.1(a)(i) of Part 4 of Schedule 3 to this RFP;

(170) “Technical Submission Information” means the component of the Proposal submitted in response to the requirements set out in Part 1 of Schedule 3 to the RFP;

(171) “Termination Notice” is defined in RFP Section 5.5(6)(b);

(172) “Timetable” is defined in RFP Section 3.1(1);

(173) “Topic Meetings” is defined in Schedule 2 – Proponent Consultation Process to this RFP;

(174) “Unaffordable” means, in respect of a Proposal, that the Affordability Price submitted in the Financial Submission is greater than the Affordability Cap; and

(175) “Unaffordable Proposal” is defined in RFP Section 6.5.6(2).

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APPENDIX A – FORM OF EARLY WORKS AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 20__.

BETWEEN:

CENTRE FOR ADDICTION AND MENTAL HEALTH, a non-share capital corporation incorporated under the laws of the Province of Ontario

(“**Contracting Authority**”)

AND:

[●]

(the “**Relevant Negotiations Proponent**”)

[Note to Proponents: Contracting Authority may require the Proponent and one or more Proponent Team Members to execute this Early Works Agreement.]

AND:

[●], a corporation incorporated under the laws of [Ontario]

(the “**Construction Contractor**”)

[Note to Proponents: Construction Contractor may be a corporation, a limited partnership or a general partnership, in each case formed under the laws of any Canadian jurisdiction and otherwise acceptable to Contracting Authority]

RECITALS:

A. Pursuant to RFP Reference Number 22-116 issued December 16, 2022 (the “**RFP**”) by the Sponsors (as defined in the RFP), the Relevant Negotiations Proponent was selected as the Relevant Negotiations Proponent (as defined in the RFP) to enter into a project agreement with Contracting Authority, substantially in the form of the draft project agreement identified as version [●] and dated [●] (the “**Referenced Project Agreement**”) for the design, construction and financing of the Centre for Addiction and Mental Health (CAMH) Phase 1D Forensic Project (the “**Project**”).

B. Pursuant to the RFP, the Relevant Negotiations Proponent may elect to undertake and perform certain activities forming part of Works prior to Financial Close at its own cost and risk.

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C. The Relevant Negotiations Proponent has elected to undertake and perform certain activities forming part of the Works prior to Financial Close as described herein, and has agreed to do pursuant to and in accordance with the terms and provisions of this Early Works Agreement.

NOW THEREFORE in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Early Works Agreement will have the respective meanings given to such terms in the Referenced Project Agreement:

- (a) “**Commercial Close**” means the date of execution of the Referenced Project Agreement.
- (b) “**Construction Contractor**” means [●].
- (c) “**Contract Price**” means \$[●].
- (d) “**Contracting Authority Representative**” means [●] or such other person designated by Contracting Authority and notified in writing to the Relevant Negotiations Proponent.
- (e) “**Documents**” means all drawings (including as built drawings), plans, specifications, manuals, records, calculations and all other documents and all revisions and additions to the same, and the designs contained in them, prepared or to be prepared by or on behalf of the Relevant Negotiations Proponent in respect of the Early Works.
- (f) “**Early Works**” has the meaning given in Section 3.
- (g) “**Early Works Lands**” means the Lands.
- (h) “**Early Works Schedule**” has the meaning given in Section 3(a)(ii).
- (i) “**Element**” means one of the elements of the Early Works, as described in Appendix C to this Early Works Agreement.
- (j) “**Financial Close Target Date**” means [●], as such date may be extended by agreement of the Parties or otherwise in accordance with the provisions of the Referenced Project Agreement.
- (k) “**Minor Deficiencies**” has the meaning given in the Referenced Project Agreement, *mutatis mutandis*.

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- (l) **“Party”** means Contracting Authority, the Construction Contractor or the Relevant Negotiations Proponent, and **“Parties”** means the Contracting Authority, the Construction Contractor, and the Relevant Negotiations Proponent.
- (m) **“Project Agreement”** means the project agreement entered into by Contracting Authority and Project Co as of Financial Close.
- (n) **“Referenced Project Agreement”** has the meaning given in Recital A.
- (o) **“Relevant Negotiations Proponent”** means [●].
- (p) **“Relevant Negotiations Proponent’s Claim”** has the meaning given in Section 10(b).

2. Interpretation

- (a) In the event that anything set out herein is inconsistent with Section 8.3 of the RFP, this Early Works Agreement shall prevail. Subject to the foregoing sentence, this Early Works Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
 - (i) The headings in this Early Works Agreement are for convenience of reference only, shall not constitute a part of this Early Works Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Early Works Agreement.
 - (ii) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Early Works Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
 - (iii) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
 - (iv) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
 - (v) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Early Works Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

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- (vi) The words in this Early Works Agreement shall bear their natural meaning.
- (vii) References containing terms such as:
 - A. “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Early Works Agreement taken as a whole; and
 - B. “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (viii) In construing this Early Works Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Early Works Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (ix) Where this Early Works Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (x) Where this Early Works Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (xi) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (xii) Unless otherwise indicated, time periods will be strictly construed.
- (xiii) Whenever the terms “will” or “shall” are used in this Early Works Agreement they shall be construed and interpreted as synonymous and to read “shall”.
- (xiv) Unless otherwise notified in writing, the Relevant Negotiations Proponent shall be entitled to treat any act of the Contracting Authority Representative which is authorized by this Early Works Agreement as being authorized by Contracting Authority, and the Relevant Negotiations Proponent shall not be required to determine whether authority has in fact been given.

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- (b) References in this Early Works Agreement to the Referenced Project Agreement will be interpreted:
- (i) for purposes of this Early Works Agreement as if the provisions of the Referenced Project Agreement relating to the Works (as defined in the Referenced Project Agreement) are given full force and effect as of the date of this Early Works Agreement, without conditions precedent, to the extent required for the scope of this Early Works Agreement; and
 - (ii) with references to “Project Co” in the Referenced Project Agreement interpreted as references to the Relevant Negotiations Proponent and the Construction Contractor.

3. Performance of the Early Works

- (a) Contracting Authority hereby retains the Relevant Negotiations Proponent to perform the work described in Appendix A – Description of Early Works to this Early Works Agreement, as the same may be modified from time to time pursuant to this Early Works Agreement (the “**Early Works**”), and the Relevant Negotiations Proponent agrees to and shall perform the Early Works in accordance with:
- (i) the relevant requirements of the Referenced Project Agreement in respect of the Works as they pertain to the Early Works, including for clarity, but not limited to, Section 11.10 of the Referenced Project Agreement, and all applicable provisions of Schedule 15 – Output Specifications to the Referenced Project Agreement, each of which, solely for the purposes of this Early Works Agreement and the Early Works, will apply *mutatis mutandis* as if the Relevant Negotiations Proponent is Project Co under the Referenced Project Agreement and will be interpreted to be in full force and effect without conditions precedent as of the date of this Early Works Agreement; and
 - (ii) the Proposed Works Schedule submitted by the Relevant Negotiations Proponent pursuant to the requirements of Part 1 – Technical Submission Requirements of Schedule 3 of the RFP, a copy of which is out in Appendix B – Early Works Schedule to this Early Works Agreement, as the same may be varied from time to time with the agreement of Contracting Authority and the Relevant Negotiations Proponent, each acting reasonably (the “**Early Works Schedule**”).
- (b) The Relevant Negotiations Proponent represents and warrants that the Early Works Schedule accurately sets out the periods during which the Early Works are anticipated to be performed as at the date hereof.
- (c) Without prejudice to anything else contained herein or set out in the Referenced Project Agreement requiring the Relevant Negotiations Proponent to comply with Applicable Law, the

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Relevant Negotiations Proponent shall at all times comply with the provisions of the *Construction Act* (Ontario) in performing its obligations hereunder.

4. Access to Site

- (a) Contracting Authority hereby grants to the Relevant Negotiations Proponent such access to the Early Works Lands as the Relevant Negotiations Proponent may reasonably require to carry out the Early Works in accordance with this Early Works Agreement. The access granted shall be subject to the requirements and restrictions pertaining to the Site and/or Lands set out in the Referenced Project Agreement and the Relevant Negotiations Proponent shall not use the Early Works Lands, or any other portion of the Site and/or Lands for any purpose other than the Early Works without the prior written approval of Contracting Authority.
- (b) For clarity, the Relevant Negotiations Proponent shall not be permitted to access any portion of the Lands or the Site, other than the Early Works Lands, during the term of this Early Works Agreement.

5. No Liability to Contracting Authority

- (a) Save as to any payments which may become due pursuant to and in accordance with Section 9, Contracting Authority shall have no liability to the Relevant Negotiations Proponent or the Construction Contractor whatsoever, whensoever and howsoever arising out of or in connection with the Early Works and/or the conditions of this Early Works Agreement.
- (b) Except as expressly stated otherwise in this Early Works Agreement, no consultation with or inspection or test or approval or comment by or on behalf of Contracting Authority, and no information of any kind or nature whatsoever furnished by Contracting Authority, will relieve the Early Works Contractor from exclusive responsibility for ensuring that the Early Works comply with the Referenced Project Agreement or estop Contracting Authority from asserting any non-compliance with the Referenced Project Agreement. In the event of any failure by the Early Works Contractor to comply with the requirements of the Referenced Project Agreement in carrying out the Early Works, the Early Works Contractor will not assert any duty of care or contributory negligence on the part of Contracting Authority in relation to such failure, and will indemnify and hold harmless Contracting Authority and the Contracting Authority Indemnified Parties against any Direct Losses and claims by third parties arising as a result of such failure to comply.

6. Relevant Negotiations Proponent to Perform at Own Cost

- (a) Without prejudice to the generality of Section 5, the Relevant Negotiations Proponent shall perform the Early Works entirely at its own cost (save as to any payments which may become due pursuant to and in accordance with Section 9) and risk, and any consequences of such performance (or any failure in or of such performance) for the manner and timing of the

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performance of the Early Works shall be entirely at the cost and risk of the Relevant Negotiations Proponent.

- (b) For the avoidance of doubt, the Relevant Negotiations Proponent shall be responsible for any and all costs it incurs as a result of funding the Early Works, which costs, for clarity, shall have formed part of the Relevant Negotiations Proponent's overall bid costs as referenced in Section 3.10 of the RFP.

7. Insurance

- (a) The Relevant Negotiations Proponent has taken out the insurance policies described in Appendix D in the amounts and on the terms stated in Appendix D and has delivered to Contracting Authority the certificates of insurance pertaining to said insurance policies prior to the execution of this Early Works Agreement. The Relevant Negotiations Proponent shall maintain said insurance policies in good standing throughout the term of this Early Works Agreement.

8. Termination of Early Works Agreement

- (a) Upon execution of the Project Agreement, the Project Agreement will supersede and replace this Early Works Agreement (except as it relates to insurance during the term of this Early Works Agreement), and this Early Works Agreement will be deemed to be terminated. Without prejudice to the generality of the foregoing, the Early Works performed by the Relevant Negotiations Proponent under and in accordance with this Early Works Agreement will be treated as having been performed under the Project Agreement (except as it relates to insurance during the term of this Early Works Agreement), and Contracting Authority's payment obligations related to the Early Works will be those under the Project Agreement and not this Agreement. The Relevant Negotiations Proponent will maintain insurance in accordance with Section 7 of this Agreement until the insurance required under Section 43 and Schedule 25 of the Project Agreement becomes effective.
- (b) Contracting Authority may upon notice in writing terminate this Early Works Agreement, and the Relevant Negotiations Proponent will immediately, in consultation with Contracting Authority, take all reasonable steps to wind up all outstanding Early Works, including, without limitation, the post termination transition requirements set out in Section 11.
- (c) If for any reason execution of the Project Agreement is not achieved by the Financial Close Target Date, then upon such date this Early Works Agreement will be deemed to be terminated, unless otherwise extended by the parties in writing, and the Relevant Negotiations Proponent will immediately, in consultation with Contracting Authority cease performance of the Early Works, and hand over to Contracting Authority any materials developed or produced in the performance of the Early Works prior to the date of termination.

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9. Compensation on Termination

- (a) In the event that this Agreement is terminated under Section 8(b) or Section 8(c), Contracting Authority shall, subject to Section 9(b), pay to the Relevant Negotiations Proponent an amount equal to the Direct Costs incurred by the Early Works Contractor in respect of the performance of the Early Works. For certainty, Direct Costs shall include overhead and profit in accordance with Table A of Schedule 22-Variations to the Referenced Project Agreement.
- (b) Contracting Authority's maximum financial commitment under this Early Works Agreement and its total aggregate liability to make payment under Section 9(a), as the case may be, shall be limited in all circumstances to the Contract Price, as adjusted by the value of any agreed Variations to the Early Works, and Contracting Authority shall have no liability to make any payment to the Relevant Negotiations Proponent in excess of the Contract Price, regardless of how any further sums are calculated or constituted.

10. Payment of Termination Amount

- (a) Either Party may set off against any amount due from such Party any amount due from the other party under or for breach of the terms of this Early Works Agreement.
- (b) Within 15 Business Days of the date of termination of the performance of the Early Works, the Relevant Negotiations Proponent shall provide to Contracting Authority Representative full details of the amounts which it believes to be due to the Relevant Negotiations Proponent pursuant to Section 9 and the basis for their calculation, together with such supporting documentation as may be necessary to verify such amounts (the "**Relevant Negotiations Proponent's Claim**").
- (c) Within 15 Business Days of receipt of such the Relevant Negotiations Proponent's Claim, Contracting Authority Representative may request that the Relevant Negotiations Proponent provide such further details and supporting documentation as it may reasonably require to verify the amount due to the Relevant Negotiations Proponent pursuant to Section 9.
- (d) The amounts due to the Relevant Negotiations Proponent pursuant to Section 9, and the basis for their calculation, shall be notified to the Relevant Negotiations Proponent by Contracting Authority Representative within 15 Business Days of receipt of such further details and supporting documentation or (if no such details have been requested by Contracting Authority Representative) within 15 Business Days of receipt of the Relevant Negotiations Proponent's Claim, and the Relevant Negotiations Proponent shall then submit to Contracting Authority Representative a full invoice for such amounts.
- (e) Within 90 days following receipt of such invoice, Contracting Authority will, pay such amounts to the Relevant Negotiations Proponent or, in the event that the Relevant Negotiations Proponent suffers an Insolvency Event, directly to the Construction Contractor.

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- (f) In the event that, notwithstanding the termination of this Early Works Agreement, Financial Close is subsequently achieved, Contracting Authority's liability to make payment pursuant to Section 9 shall cease, and the Relevant Negotiations Proponent shall repay any amounts paid by Contracting Authority pursuant to this Early Works Agreement to Contracting Authority within 60 days of Financial Close. Relevant Negotiations Proponent shall indemnify Contracting Authority for damages suffered or incurred on account of any payment not duly made by Relevant Negotiations Proponent pursuant to the terms of the Referenced Project Agreement on the due date, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, up to and including the date of payment.

11. Post-Termination Transition

- (a) Upon termination of the Early Works pursuant to Section 8, the Relevant Negotiations Proponent shall forthwith cease the performance of the Early Works in a proper and orderly manner and:
- (i) within 5 Business Days, the Relevant Negotiations Proponent shall vacate the Lands and the Site and remove therefrom in a proper and orderly manner all waste materials and site accommodation, plant and machinery used in or arising out of the Early Works, and shall leave the Site in a clean, tidy and safe condition;
 - (ii) ownership of all completed permanent work and goods and materials comprised in the Early Works shall pass to Contracting Authority; and
 - (iii) the Relevant Negotiations Proponent shall deliver to Contracting Authority Representative such of the Documents as are then in the possession of the Relevant Negotiations Proponent.

12. Relevant Negotiations Proponent and Construction Contractor Indemnity

- (a) The Relevant Negotiations Proponent and the Construction Contractor agree, jointly and severally, to indemnify the Contracting Authority Indemnified Parties and each of their respective directors, officers, employees, agents and representatives against all losses, damages, costs, claims, expenses or liabilities incurred in respect of any death or personal injury or damage to real or personal property (including the Lands, Site, the Early Works and the Existing Facilities) (save for any Indirect Losses incurred by Contracting Authority) arising out of or in connection with or by reason of the execution of the Early Works pursuant to this Early Works Agreement, save to the extent caused by any breach of this Early Works Agreement by Contracting Authority, or by any deliberate or negligent act or omission of Contracting Authority or any Contracting Authority Indemnified Party.

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13. Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Early Works Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Early Works Agreement) and served by sending the same by registered mail or by hand or transmitted by electronic transmission to the address or electronic mail address as follows:

If to the Relevant Negotiations [●]
Proponent:

E-mail:[●]

Fax: [●]

Attn: [●]

If to the Construction Contractor: [●]

E-mail:[●]

Fax: [●]

Attn: [●]

If to Contracting Authority:

Centre for Addiction and Mental Health

E-mail:[●]

Fax: [●]

Attn: [●]

With a copy to:

Ontario Infrastructure and Lands Corporation

1 Dundas Street West, 20th Floor

Toronto, Ontario

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M5G 1Z3

Attn: [●]

Email: notices@infrastructureontario.ca

14. Electronic Transmission

- (a) Where any Notice is provided or submitted to a Party via electronic transmission, an original of the Notice sent via electronic transmission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic transmission shall not be invalid by reason only of a Party's failure to comply with this Section 14.

15. Change of Address

- (a) Either Party to this Early Works Agreement may, from time to time, change any of its contact information set forth in Section 13 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

16. Deemed Receipt of Notices

- (a) Subject to Sections 16(b) and 16(c):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by electronic transmission shall be deemed to have been received on the day it is transmitted by electronic transmission.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by electronic transmission in accordance with Section 15.
- (c) If any Notice delivered by hand or transmitted by electronic transmission is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

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17. Amendments

- (a) This Early Works Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Early Works Agreement.

18. Waiver

- (a) No waiver made or given by a Party under or in connection with this Early Works Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

19. Relationship Between the Parties

- (a) The Parties are independent contractors. This Early Works Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or principal and agent.

20. Joint and Several Liability

- (a) Each of [●] and [●] covenant and agree that they shall be jointly and severally liable for and in respect of their obligations pursuant to this Early Works Agreement. *[Note to Proponents: Contracting Authority may require the Proponent and one or more Proponent Team Members to execute this Early Works Agreement.]*

21. Entire Agreement

- (a) Except where provided otherwise in this Early Works Agreement, this Early Works Agreement and the Referenced Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Early Works Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Early Works Agreement.

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- (b) Contracting Authority is not obligated in any way by the terms of this Early Works Agreement to proceed to Commercial Close or Financial Close or to proceed with the procurement of the Project.

22. Severability

- (a) Each provision of this Early Works Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Early Works Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Early Works Agreement. If any such provision of this Early Works Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Early Works Agreement as near as possible to its original intent and effect.

23. No Assignment

- (a) Neither the Relevant Negotiations Proponent nor the Construction Contractor shall assign or transfer all or any part of its rights obligations under this Early Works Agreement without the prior consent of Contracting Authority. Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Early Works Agreement to any person to whom Contracting Authority may assign or otherwise dispose of its interest in the Referenced Project Agreement pursuant to Section 48.2 of the Referenced Project Agreement.

24. Confidentiality

- (a) The Relevant Negotiations Proponent shall comply with all the obligations incumbent upon Project Co under Section 41 of the Referenced Project Agreement, the provisions of which are incorporated into this Early Works Agreement, *mutatis mutandis*.

25. Remedies Cumulative

- (a) The rights and remedies under this Early Works Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a Party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that Party may be entitled.

26. Enurement

- (a) This Early Works Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

27. Governing Law and Jurisdiction

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- (a) This Early Works Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Early Works Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

28. Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Early Works Agreement.

29. Language of Agreement

- (a) Each Party acknowledges having requested and being satisfied that this Early Works Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en déclare satisfaite.

30. Proof of Authority

- (a) Contracting Authority reserves the right to require any person executing this Early Works Agreement on behalf of the Relevant Negotiations Proponent or the Construction Contractor to provide proof, in a form acceptable to Contracting Authority, that such person has the requisite authority to execute this Early Works Agreement on behalf of and to bind the Relevant Negotiations Proponent or the Construction Contractor, respectively.

31. Counterparts

- (a) This Early Works Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or electronically transmitted form provided that any Party providing its signature in electronically transmitted form shall promptly forward to such Party an original signed copy of this Early Works Agreement which was so electronically transmitted.

32. Survival of Obligations

- (a) All obligations under this Early Works Agreement that necessarily extend beyond termination of this Early Works Agreement in order to fully achieve their intended purpose will survive termination of this Early Works Agreement, including without limiting the generality of the foregoing,

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- (i) the insurance obligations, to the extent provided in Section 7; and
- (ii) all indemnification and hold harmless obligations, insofar as they apply to events that occurred prior to termination of this Early Works Agreement.

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IN WITNESS WHEREOF the Parties have executed this Early Works Agreement as of the date first above written.

[CONTRACTING AUTHORITY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

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[RELEVANT NEGOTIATIONS PROPONENT]

By: _____
Name:
Title:

By: _____
Name:
Title:

[CONSTRUCTION CONTRACTOR], a corporation incorporated under the laws of [●] (the “**Construction Contractor**”)

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

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SCHEDULE A

DESCRIPTION OF EARLY WORKS

- (1) The following Works shall constitute the Early Works:
- (a) **Design Development:**
 - (i) the commencement of the preparation of the 50% Design Development Submittals in accordance with Schedule 10, Appendix A of the Referenced Project Agreement, subject to the following requirements:
 - A. no more than 3 Design Workshops shall be held during the term of this Early Works Agreement; and
 - B. all other review timelines and requirements of the Referenced Project Agreement, including the Output Specifications, shall apply;
 - (b) **Demolition Design**
 - (i) the commencement of the Demolition design in support of obtaining the required demolition permits, subject to the requirements of Schedule 1, Appendix A of the Referenced Project Agreement, including the engagement of third party contractors;
 - (c) **Copper/Fibre Reconnection**
 - (i) the commencement of activities in support of Copper/Fibre relocation activities on the Site, including the engagement of third party contractors; and
 - (d) **Tree Protection**
 - (i) the commencement of work in support of obtaining tree removal permits for the Project, subject to the requirements of Schedule 1, Appendix A of the Referenced Project Agreement, including the engagement of third party contractors.

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SCHEDULE B

EARLY WORKS SCHEDULE

[Note to Proponents: To be developed based on the Relevant Negotiations Proponent's RFP Submission.]

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SCHEDULE C

SCHEDULE OF COMPLETED VALUE(S)

[Note to Proponents: To be developed based on the Relevant Negotiations Proponent's RFP Submission.]

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SCHEDULE D

INSURANCES

- (1) From and after the execution of the Early Works Agreement, the Relevant Negotiations Proponent, at its own expense, shall obtain and maintain, or cause to be obtained and maintained, the following insurances:
 - (a) Commercial General Liability, including:
 - (i) A limit of \$10,000,000 per occurrence and in the aggregate with respect to products and completed operations hazards;
 - (ii) Owner's and Contractor's Protective;
 - (iii) Blanket Contractual (written);
 - (iv) Direct and Contingent Employers Liability;
 - (v) Personal Injury (nil participation);
 - (vi) Cross Liability and Severability of Interest with respect to each insured party;
 - (vii) Non-Owned Automobile Liability;
 - (viii) Permission for Unlicensed Vehicles' (partial road use);
 - (ix) Unlicensed Equipment;
 - (x) Loss of Use Without Property Damage;
 - (xi) Loading and Unloading of Automobiles;
 - (xii) Broad Form Property Damage;
 - (xiii) Broad Form Completed Operations;
 - (xiv) Intentional Injury, committed to Protect Persons or Property;
 - (xv) Worldwide Territory, subject to suits being brought in Canada or the US;
 - (xvi) 24 Months Completed Operations Extension;
 - (xvii) Contracting Authority added as an additional insured; and

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- (xviii) A waiver of subrogation in favour of Contracting Authority.
- (b) Automobile Liability, including:
 - (i) A limit of \$5,000,000 per occurrence;
 - (ii) Standard Ontario Owner's Form; and
 - (iii) Business automobile liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.
- (c) Contractors' Equipment, including:
 - (i) All Risks coverage on all owned, rented, leased or borrowed contractors' equipment, used at the Lands; and
 - (ii) A waiver of subrogation in favour of Contracting Authority.
- (d) WSIB, including:
 - (i) Coverage in accordance with Ontario Act's established benefits and schedules.
- (2) Except with respect to WSIB coverage, all policies of insurance to be obtained (or caused to be obtained) by the Relevant Negotiations Proponent in accordance with this Schedule D shall be issued by financially sound insurers in accordance with Section 14 of Schedule 25 – Insurance and Performance Security Requirements of the Referenced Project Agreement, and, where required by statute, be licensed to insure such risk in the Province of Ontario
- (3) Except with respect to WSIB coverage, all policies of insurance to be obtained (or caused to be obtained) by the Relevant Negotiations Proponent in accordance with this Schedule D shall not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least 30 days prior written notice by registered mail, at the address specified, to Contracting Authority. For greater certainty, the terms “adversely reduced”, “adversely materially altered” and “adversely materially amended” as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such

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- adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- (4) Prior to the execution of this Early Works Agreement, the Relevant Negotiations Proponent will provide Contracting Authority with certificates of insurance, confirming that the insurances specified in (1) have been obtained and are in full force and effect.
 - (5) If coverage under any insurance policy required to be obtained (or caused to be obtained) by the Relevant Negotiations Proponent should lapse, be terminated or be cancelled, then, if directed by Contracting Authority, all work by the Relevant Negotiations Proponent shall immediately cease until satisfactory evidence of renewal is produced.
 - (6) The Relevant Negotiations Proponent shall provide to Contracting Authority, at least five Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by the Relevant Negotiations Proponent pursuant to this Schedule D evidence of the renewal of each such policy satisfactory to Contracting Authority, acting reasonably.
 - (7) The Relevant Negotiations Proponent shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule D, with the exception that for all Subcontractors the amount “\$10,000,000” in 1.1.1(1)(a)(i) is replaced with the amount “\$5,000,000”.
 - (8) If the Relevant Negotiations Proponent receives notice that any Subcontractor employed by or through the Relevant Negotiations Proponent is not covered by any insurance required by this Schedule D to be obtained (or caused to be obtained) by the Relevant Negotiations Proponent, the Relevant Negotiations Proponent shall:
 - (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Lands and ensure that such Subcontractor does not perform any further part of the Early Contractor Activities until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule D, replace the Subcontractor with a new Subcontractor who can be covered by insurance required by this Schedule D or who can obtain the required insurance coverage; it being acknowledged by the Relevant Negotiations Proponent that the requirements and restrictions set forth in this Early Works Agreement regarding new and replaced Subcontractors shall be complied with.

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