

Request for Proposals

(RFP VERSION 1.0)

TO BUILD AND FINANCE

**ST. THOMAS ELGIN GENERAL HOSPITAL
EMERGENCY, AMBULATORY AND MENTAL
HEALTH REDEVELOPMENT PROJECT**

RFP NO. 14-368P

TABLE OF CONTENTS

Page

SECTION 1 - INTRODUCTION	1
1.1 General	1
1.2 Prequalified Parties, Prequalified Subcontractors and Proponent Representatives	2
1.3 Overview of the Stages of Project Procurement and Implementation	3
1.4 Fairness Monitor	3
SECTION 2 - THE RFP DOCUMENTS AND THE DATA ROOM	3
2.1 RFP Documents	3
2.2 Conflicts or Inconsistencies in Documents	5
2.3 Distribution of Documents to Proponents	6
2.4 Data Room	6
2.5 Proponent Investigations	7
SECTION 3 - THE RFP PROCESS	8
3.1 RFP Process Timetable	8
3.2 Questions and RFP Document Comments	8
3.2.1 Contact Person	8
3.2.2 Clarification/Question/RFI Submission Process	8
3.2.3 RFP Documents Comments	10
3.3 Communications Restrictions	10
3.3.1 Communications with Municipalities, Other Government Authorities and Utilities	10
3.3.2 Prohibited Contacts and Lobbying Prohibition	10
3.3.3 Media Releases, Public Disclosures and Public Announcements	11
3.3.4 Restrictions on Communications between Proponents – No Collusion	12
3.4 Meetings with Proponents	12
3.4.1 General Proponents Meeting	12
3.4.2 Commercially Confidential Proponent Meetings	13
3.5 Visiting the Site and the Existing Facility	13
3.5.1 Scheduled Visits	13
3.5.2 Additional Site Visits	14
3.5.3 Additional Existing Facility Visits	14
3.6 Changes to Proponents and Proponent Team Members	15
3.7 Addenda/Changes to the RFP Documents	17
3.8 Freedom of Information, Confidentiality and Copyright Matters	18

TABLE OF CONTENTS
(continued)

	Page
3.8.1 Freedom of Information and Protection of Privacy Act	18
3.8.2 Confidentiality Agreements	18
3.8.3 Confidential Information	18
3.8.4 Copyright and Use of Information in Proposals	20
3.8.5 Copyright Notice.....	21
3.9 Conflict of Interest and Ineligible Proponent Team Members and Advisors	22
3.9.1 Conflict of Interest	22
3.9.2 Ineligible Proponent Team Members.....	23
3.10 Proponent Costs	24
3.11 Insurance and Workers Compensation	25
3.11.1 Insurance Required during the RFP Process.....	25
3.11.2 Workplace Safety during the RFP Process	26
3.11.3 Infrastructure Ontario Construction Insurance Program.....	26
3.12 Review of Mechanical and Electrical Subcontractors Qualifications.....	26
SECTION 4 - PROPOSAL – FORM AND CONTENT REQUIREMENTS	27
4.1 General Submission Requirements	27
4.1.1 Format of the Proposal.....	27
4.1.2 Content of the Proposal – General	27
4.1.3 Instructions for Parts A and B of the Phase 1 Proposal Documents	29
4.1.4 Instructions for Parts C and D of Phase 2 of the Proposal Documents	29
4.2 Surety’s Consent	29
SECTION 5 - SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL	31
5.1 Submission of Proposal.....	31
5.1.1 General Submission Requirements	31
5.1.2 Two Phased Submission	32
5.2 Withdrawal of Proposals.....	33
5.3 Amendment of Proposal	33
5.4 Proposal Irrevocability.....	34
5.5 Extension of Proposal Validity Period.....	49
5.6 Lender Requirements	50

TABLE OF CONTENTS

(continued)

	Page
SECTION 6 - EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS	51
6.1 Evaluation Committee and Advisors	51
6.2 Sponsors' Clarification and Verification of Proposals	51
6.3 Steps in the Evaluation Process	52
6.3.1 Step 1 – Compliance of Proposals	52
6.3.2 Step 2 – Review of the Phase 1 and Phase 2 Proposal Submission Forms	53
6.3.3 Step 3 – Review of the Phase 1 Proposal Documents – Part B	53
6.3.4 Step 4 – Review of the Phase 2 Proposal Documents – Part C	54
6.3.5 Step 5 – Establishing a Final Proposal Score.....	55
6.3.6 Step 6 – Ranking the Proponents	55
SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS	56
7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking	56
7.1.2 Disqualification.....	57
SECTION 8 - COMPETITION, NEGOTIATIONS AND THE IDENTIFICATION OF A PREFERRED PROPONENT	58
8.1 Evaluation Results and the Identification of a Preferred Proponent or Negotiations Proponents	58
SECTION 9 - PREFERRED PROPONENT	59
9.1 Identification of the Preferred Proponent and the Letter of Credit.....	59
9.2 Preferred Proponent Obligations.....	61
SECTION 10 - GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT	62
10.1 General Rights of the Sponsors.....	62
10.2 Special Circumstances	64
10.3 Sponsors' Liability for Proponent's Costs.....	65
10.4 Applicable Law, Attornment and Limit on Liability	65
10.5 Licenses, Permits, etc.....	66
10.6 Power of Legislative Assembly	66
SECTION 11 - NOTIFICATION AND DEBRIEFING.....	66

TABLE OF CONTENTS
(continued)

	Page
SECTION 12 - DEFINITIONS	67
12.1 General	67
12.2 RFP Definitions	67

SCHEDULE 1: RFP DATA SHEET

SCHEDULE 2: PHASE 1 – PROPONENT SUBMISSION FORMS

- Form 2-1 Phase 1 Proposal Submission Form
- Form 2-2 Cost of the Work Form
- Form 2-3 [Intentionally Deleted]
- Form 2-4 Lender’s Identification and Financing Commitment Form
- Form 2-5 Surety’s Consent
- Form 2-6 Contract Time Form
- Form 2-7 Proposed Construction Schedule
- Form 2-8 Revised Key Personnel Form
- Form 2-9 Procurement Monitoring and Implementation Plan

SCHEDULE 3: PHASE 2 – PROPONENT SUBMISSION FORMS

- Form 3-1 Phase 2 Proposal Submission Form
- Form 3-1A Certificate of Officer
- Form 3-2 Guaranteed Price Form
- Form 3-3 Financing Plan
- Form 3-4 Financial Model
- Form 3-5 Unit Prices Form
- Form 3-6 Sponsors’ Alternative Prices Form
- Form 3-7 Sponsor’s Separate Prices Form
- Form 3-8 Intentionally Deleted
- Form 3-9 Breakdown of Cost of Work (By Division)
- Form 3-10 Itemized Pricing Form
- Form 3-11 Contractor Value-Added Suggested Alternative Prices Form

SCHEDULE 4: STANDBY LETTER OF CREDIT

SCHEDULE 5: FORM OF PROJECT AGREEMENT

REQUEST FOR PROPOSALS

SECTION 1 - INTRODUCTION

1.1 General

(1) This Request for Proposals (“**RFP**”) is issued by Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**”, also known as “**OILC**”), in conjunction with the clients (referred to collectively as the “**Clients**”) named in the RFP Data Sheet. Infrastructure Ontario and the Clients are collectively referred to as the “Sponsors” for the purposes of this RFP.

(2) 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**”). In this RFP, Prequalified Parties that submit documents in response to this RFP are referred to as “Proponents” and their proposal submissions (consisting of both the Phase 1 Proposal Documents and the Phase 2 Proposal Documents submitted in accordance with this RFP) are referred to as “Proposals”. The entity that is selected by the Sponsors to enter into the Project Agreement Documents is referred to as the “Preferred Proponent”. For the purposes of convenience, in this RFP the expression “Proponents” also includes Prequalified Parties prior to the submission of their Proposals.

(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**”). All rights and obligations arising out of the RFP (the bidding contract or “**Contract A**”) terminate either on cancellation of this RFP Process by the Sponsors, or:

- (a) for the Preferred Proponent on Commercial Close, except with respect to the Preferred Proponent’s obligations pursuant to RFP Section 4.2; 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.

(5) The Project to which this RFP applies has been approved to proceed as an alternative financing and procurement project. Details relating to the Ministry of Economic

Development, Employment and Infrastructure's ("MEDEI") "Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector" (the "IPFP Framework") are available on the MEDEI website at www.mei.gov.on.ca. The IPFP Framework sets out five fundamental principles for the procurement of public infrastructure, including the Project, as follows:

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

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

1.2 Prequalified Parties, Prequalified Subcontractors and Proponent Representatives

(1) 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.

(3) If the Sponsors have prequalified subcontractors ("**Prequalified Subcontractors**") those Prequalified Subcontractors are listed in the RFP Data Sheet. If

Prequalified Subcontractors are listed in the RFP Data Sheet, Proponents may choose any of the Prequalified Subcontractors to carry out the applicable work. For those areas of work in which the Sponsors have identified Prequalified Subcontractors, only the Prequalified Subcontractors are eligible to participate in a Proponent's Proposal.

1.3 Overview of the Stages of Project Procurement and Implementation

(1) Infrastructure Ontario will carry out the procurement and implementation of the Project in accordance with the following stages:

(a) Stage 1 – Prequalification Stage

The prequalification stage (“**Prequalification Stage**”) preceded the RFP Process and identified the Prequalified Parties. The Prequalification Stage is a 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 Infrastructure Ontario 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 Documents

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

1.4 Fairness Monitor

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

SECTION 2 - THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

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

(a) the RFP;

- (b) Schedule 1 – RFP Data Sheet;
- (c) Schedule 2 – Phase 1 – Proponent Submission Forms consisting of:
 - (i) Form 2-1 – Phase 1 Proposal Submission Form;
 - (ii) Form 2-2 – Cost of the Work Form;
 - (iii) Form 2-3 – [Intentionally Deleted];
 - (iv) Form 2-4 – Lender’s Identification and Financing Commitment Form;
 - (v) Form 2-5 – Surety’s Consent;
 - (vi) Form 2-6 – Contract Time Form
 - (vii) Form 2-7 – Proposed Construction Schedule;
 - (viii) Form 2-8 – Revised Key Personnel Form; and
 - (ix) Form 2-9 – Procurement Monitoring and Implementation Plan;
- (d) Schedule 3 – Phase 2 – Proponent Submission Forms consisting of:
 - (i) Form 3-1 – Phase 2 Proposal Submission Form;
 - (ii) Form 3-1A – Certificate of Officer;
 - (iii) Form 3-2 – Guaranteed Price Form;
 - (iv) Form 3-3 – Financing Plan;
 - (v) Form 3-4 – Financial Model;
 - (vi) Form 3-5 – Unit Prices Form
 - (vii) Form 3-6 – Sponsors’ Alternative Prices Form;
 - (viii) Form 3-7 – Sponsors’ Separate Prices Form;
 - (ix) Form 3-8 – [Intentionally Deleted];
 - (x) Form 3-9 – Breakdown of Cost of the Work (By Division);
 - (xi) Form 3-10 – Itemized Pricing Form; and

(xii) Form 3-11 – Contractor Value-Added Suggested Alternative Prices Form;

(e) Schedule 4 – Standby Letter of Credit

(f) Schedule 5 – Project Agreement Documents (including all related Schedules, Appendices and Attachments) as listed in the RFP Data Sheet; and

(g) Addenda to the RFP Documents, if any.

(2) If any of the forms listed in RFP Sections 2.1(1)(c) or 2.1(1)(d) are not applicable to this RFP Process, the forms that are not applicable are listed in the RFP Data Sheet.

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

2.2 Conflicts or Inconsistencies in Documents

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

(a) In respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, the RFP shall prevail over the Schedules to the RFP during the RFP Process;

(b) In respect of all matters of interpretation of the Project and the Project Agreement Documents themselves during the RFP Process, the Project Agreement Documents shall prevail over the RFP and all other Schedules to the RFP; and

(c) For the purpose of resolving conflicts or inconsistencies among the documents that constitute the Project Agreement Documents, the provisions of the Project Agreement Documents 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 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) Unless Proponents are expressly notified otherwise, if there is any conflict or inconsistency between two versions of the same RFP Document contained in the Data Room, the RFP Document of the later date shall prevail over the same RFP Document of an earlier date. For the purposes of this RFP Section 2.2(5), the date of 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) 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 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 the Phase 1 Proposal Documents.

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

2.4 Data Room

- (1) The Sponsors have established an electronic data room (the "**Data Room**") at a secure website address for,
- (a) the distribution of RFP Documents and Addenda (including "black-lined" RFP Documents revised by Addenda); and

- (b) the provision of various types of background information for the Proponents' review ("**Background Information**").
- (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 and Background Information and, at all times, bases its actions or submissions during the RFP Process on only the most current RFP Documents or Background Information.

2.5 Proponent Investigations

(1) 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 and to perform any other investigations, including seeking independent advice, considered necessary by the Proponent and Proponent Team Members to satisfy themselves as to all existing conditions affecting the Project or the Project Agreement Documents. 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. The Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the Sponsors is more particularly set out in the Project Agreement Documents.

(2) Except as explicitly provided in the Project Agreement Documents, the Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP Documents or made available to Proponents in the Data Room as Background Information or of any other background or reference information or documents prepared by the Sponsors, 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 Phase 1 Proposal Documents (the “**Initial Submission Deadline**”), the deadline for the submission of the Phase 2 Proposal Documents (the “**Final Submission Deadline**”) and the general timetable for the RFP Process (the “**Timetable**”) are set out in the RFP Data Sheet.

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

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

3.2 Questions and RFP Document Comments

3.2.1 Contact Person

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

3.2.2 Clarification/Question/RFI Submission Process

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

- (a) Proponents are permitted to submit RFIs categorized as follows:
 - (i) RFIs that are of general application and that would apply to other Proponents (“**General RFIs**”); and
 - (ii) RFIs that the Proponent considers to be commercially sensitive or confidential to that particular Proponent (“**Commercially Confidential RFIs**”);

- (b) If the Sponsors disagree with the Proponent's categorization of an RFI as a Commercially Confidential RFI, the Sponsors will give the Proponent an opportunity to either 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; and
- (d) If the Sponsors agree with the Proponent's categorization of a Commercially Confidential RFI, then the Sponsors will provide a response to that RFI to only the Proponent that submitted the RFI.

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

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

(6) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with this RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of RFIs. The Sponsors are not responsible in any way whatsoever for any misunderstanding by any Proponent or Proponent Team Member of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by the Sponsors.

3.2.3 RFP Documents Comments

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

3.3 Communications Restrictions

3.3.1 Communications with Municipalities, Other Government Authorities and Utilities

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

(2) The Sponsors are not, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents receive or believe they may have received from a municipality, a government authority, or a utility. Proponents and Proponent Team Members rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors 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 or 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) MEDEI or any other Ministry 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 Section 3.3.2(2)(a) to (d).

(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 (2), the Sponsors may, in their sole discretion,

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

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

3.3.3 Media Releases, Public Disclosures and Public Announcements

(1) A Proponent shall not, and shall ensure that 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 nor 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. 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 required 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 the Applicable Law. Proponents shall prepare and submit Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

(2) Without limiting the generality of RFP Section 3.3.4(1), a Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent any information whatsoever about its Phase 1 Proposal Documents in the period between the Initial Submission Deadline and the Final Submission Deadline.

(3) For greater clarity, RFP Sections 3.3.4(1) and 3.3.4(2) apply to Proponents and Proponent Team Members, and all of their respective Advisors, employees and representatives.

3.4 Meetings with Proponents

3.4.1 General Proponents Meeting

(1) The Sponsors may, in their sole discretion, convene general Proponents meetings (“**Proponents Meeting**”) on the dates and at the times set out in the Timetable and at the locations and for the purposes set out in the RFP Data Sheet. While attendance at Proponents Meetings 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 the Proponents Meeting. If the Sponsors give oral answers at the Proponents Meeting, those answers shall not be considered final unless the Proponent also submits those questions in accordance with RFP Section 3.2.2 and responses are issued in accordance with RFP Section 3.2.2.

3.4.2 Commercially Confidential Proponent Meetings

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

- (a) bilateral meetings between the Sponsors and their representatives and Advisors and individual Proponents and their representatives and Advisors, to discuss the Project Agreement Documents and the Proponent’s suggested amendments to the Project Agreement Documents; and
- (b) bilateral meetings between the Sponsors’ and their representatives and Advisors and individual Proponents and their representatives and Advisors to discuss either or both of:
 - (i) Project design issues; and
 - (ii) Innovation Submissions being considered by the Proponents for inclusion in their Proposals, if any.

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

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

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

3.5 Visiting the Site and the Existing Facility

3.5.1 Scheduled Visits

(1) If the Sponsors have established scheduled dates for Site visits and Existing Facility visits (“**Scheduled Visits**”) for all Proponents and their representatives and Advisors, the dates and times of the Scheduled Visits will be set out in the Timetable. A Proponent must attend those Scheduled Visits assigned to it. For clarity, Scheduled Visits are in addition to any Proponent visits scheduled in accordance with RFP Section 3.5.2.

3.5.2 Additional Site Visits

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

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

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

3.5.3 Additional Existing Facility Visits

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

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

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

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

- (a) All Proponent and Proponent Team Member representatives upon arrival at the Existing Facility shall report to the appropriate authority at the Existing Facility, sign in as required by the Existing Facility and receive and wear an identification badge;
- (b) All Proponent and Proponent Team Member representatives shall strictly obey all instructions from Sponsors' representatives during the visit and shall comply with all site-specific security, safety and 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 Facility;
- (d) The Proponent and Proponent Team Member representatives shall visit only those specific areas of the Existing Facility to which the Proponent has been granted access in the Contact Person's confirmation; and
- (e) The Proponent and Proponent Team Member representatives shall not take photographs without the prior written consent of the Contact Person. If photographs are permitted by the Contact Person, they may be taken by the Proponent and Proponent Team Member representatives only in the specific areas of the Existing Facility for which consent to photograph has been given.

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

3.6 Changes to Proponents and Proponent Team Members

(1) A Proponent shall not change its shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), Proponent Team Members, proposed subcontractors, Key Personnel, or other parties identified in the Proponent's Prequalification Submission (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors.

(2) Despite RFP Section 3.6(1), Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section 3.6.

(3) If, prior to the Initial Submission Deadline, a Proponent wishes to request a change in its Identified Proponent Parties, including any proposed withdrawal from, addition to,

substitution of the Identified Proponent Parties, (each is a “**Proposed Change in Identified Proponent Parties**”), the Proponent shall notify the Contact Person as soon as possible and, in any event no later than 7 days prior to the Initial Submission Deadline. That notification shall clearly identify the Proposed Change in the Identified Proponent Parties (including, as applicable, any proposed additional or substitute Identified Proponent Party) and provide sufficient documentation to demonstrate that:

- (a) such Proposed Change in Identified Proponent Parties 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 Parties’ ability to perform their respective obligations under the Project Agreement, and
- (b) in the event that the Proposed Change in Identified Proponent Parties is a proposed addition to or a substitution of one or more of the Identified Proponent Parties, the proposed additional or substitute party(ies) would have met or exceeded any applicable criteria applied during the RFQ process.

(4) In response to a request in accordance with RFP Section 3.6(3), the Sponsors may, in their sole discretion, provide the Proponent with instructions as to the type of information required by the Sponsors to consider the Proposed Change in Identified Proponent Parties as well as the deadlines for submission of information that the Proponent must meet in order to have its request considered by the Sponsors.

(5) The Proponent shall provide any further documentation as may be reasonably requested by the Sponsors to assess any Proposed Change in Identified Proponent Parties. If the Sponsors, in their sole discretion, consider the Proposed Change in Identified Proponent Parties to be acceptable, the Sponsors may consent to such Proposed Change in Identified Proponent Parties. The Sponsors’ consent to such Proposed Change in Identified Proponent Parties, however, may be subject to such terms and conditions as the Sponsors may require. Without limiting the generality of the foregoing,

- (a) in the event that the Proposed Change in Identified Proponent Parties is a proposed withdrawal of an Identified Proponent Party, then, unless otherwise permitted by the Sponsors in writing, the Proponent shall propose a substitute party for review by the Sponsors in the manner described in RFP Section 3.6(3) and if such proposed substitute is not acceptable to the Sponsors, the Proponent shall propose an alternate substitute for review by the Sponsors in the same manner as the first proposed substitute; or
- (b) in the event that the Proposed Change in Identified Proponent Parties is a proposed substitute for an Identified Proponent Party, which, for clarity,

must be proposed for review by the Sponsors in the manner described in RFP Section 3.6(3), and if such proposed substitute is not acceptable to the Sponsors, the Proponent may propose an alternate substitute for review by the Sponsors in the same manner as the first proposed substitute.

(6) The Sponsors may, in their sole discretion, disallow any actual or Proposed Change in Identified Proponent Parties.

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

(8) If on or after the Initial Submission Deadline and prior to Commercial Close there is an actual or Proposed Change in Identified Proponent Parties, or if there is a change in circumstances 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 Documents, then the Proponent shall promptly notify the Sponsors in writing by delivery or e-mail to the Contact Person. The Sponsors may, in their sole discretion, refuse to accept a change in an Identified Proponent Party that occurs or is requested by the Proponent after the Initial Submission Deadline and may, in their sole discretion, disqualify the Proponent from continuing in the RFP Process.

(9) 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 Personnel 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 Personnel 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 Initial Submission Deadline. The Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors, the Sponsors' Advisors or representatives of any Sponsors, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The approximate final date that the Sponsors will issue an Addendum in respect of the Project Agreement Documents is set out in the Timetable. 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) (“**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 in accordance with FIPPA or otherwise as required under the Applicable Law.

3.8.2 Confidentiality Agreements

(1) 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.

3.8.3 Confidential Information

(1) For the purpose of this RFP Process, “Confidential Information” means all material, data, information or any item in any form, whether oral or written, including in electronic or hard-copy format, supplied by, obtained from or otherwise provided by the

Sponsors or the Government of Ontario in connection with the RFP Process, the RFP Documents or the Project, whether supplied, obtained from or provided before or after the RFP Process.

- (2) The Proponent agrees that all Confidential Information,
 - (a) shall remain the sole property of the Government of Ontario or the Sponsors, as applicable, and the Proponent shall treat it as confidential;
 - (b) shall not be used by the Proponent for any 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, each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents, advisors and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.8.3 by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the Sponsors act as trustee for each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or the Government of Ontario or any of their respective directors, officers, consultants, employees, agents, advisors or representatives and that the Sponsors have agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives.

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

(5) The provisions of this RFP Section 3.8.3 shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all Prequalified Parties, whether or not they submit a Proposal.

(6) Notwithstanding anything else to the contrary in this RFP, 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 Proponents during the RFP Process shall become the property of the Sponsors, in accordance with this RFP Section 3.8.4, upon the submission of Proposals.

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

(3) All requirements, designs, documents, plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the sole property of the Sponsors. Upon request of the Sponsors, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the Sponsors.

(4) The Proponent shall grant to the Sponsors 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 License**”). Without limiting the foregoing, the Proposal Information License 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 be liable, except Project Co (as defined in the Project Agreement), in relation to the Project, to the Sponsors or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the Sponsors’ use of the Proposal Information.

(5) For the purpose of this RFP Section 3.8.4 “Proposal Information” includes,

- (a) any and 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 Document; 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 all those which may be connected in any way to the preparation, submission, review or negotiation of any Proposal or the Project Agreement Documents.

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

3.8.5 Copyright Notice

(1) The Parties acknowledge that the Queen’s Printer for Ontario is the exclusive owner of the copyright in the RFP Documents.

3.9 Conflict of Interest and Ineligible Proponent Team Members and Advisors

3.9.1 Conflict of Interest

(1) Proponents and Proponent Team Members and each of their Advisors, shall disclose, in the Proponents' Phase 1 Proposal Submission Forms, perceived, potential and actual Conflicts of Interest.

(2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of its Proposal, discovers any perceived, potential or actual Conflicts of Interest that the Proponent, Proponent Team Members or any of their Advisors may have with any one or more of the Sponsors, any of the Sponsors' board members, MEDEI, any other Ministry or entity named in the RFP Data Sheet or the Government of Ontario, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.

(3) At the request of the Sponsors, the Proponent shall provide the Sponsors with the Proponent's proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent shall submit any additional information to the Sponsors that the Sponsors consider necessary to properly assess the perceived, potential or actual Conflict of Interest.

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

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

(6) The Sponsors may, in their sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of Proponents or Proponent Team Members, or any of their respective Advisors. A waiver may be upon such terms and conditions as the Sponsors, in their sole discretion, require to satisfy themselves that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the Sponsors, in their sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.

(7) For the purposes of this RFP Process "Conflict of Interest" includes any situation or circumstance where in relation to the Project, a Proponent or any Proponent Team Member or any Proponent Advisor:

- (a) has commitments, relationships or financial interests or involvement in ongoing litigation 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 Documents 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 Proponent Team Members

(1) As a result of their involvement in the Project, the persons named in the RFP Data Sheet as "Ineligible Persons", their employees and any of their subcontractors, advisors, consultants or representatives engaged in respect of the 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 Persons Affiliate**") are not eligible to participate as Proponent Team Members, Proponent Advisors, Financial Services Providers or an 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, Proponent Advisor, Financial Services Providers or an 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, Proponent Advisor, Financial Services Providers or an Advisor to a Financial Services Provider. To obtain consent for an Ineligible Persons Affiliate to participate as a Proponent Team Member, Proponent Advisor, Financial Services Providers or an 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 Advisor, Financial Services Provider or an 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.

3.10 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 at any other meeting with the Sponsors;
- (c) due diligence and information gathering processes;
- (d) Scheduled Visits, Site visits or Existing Facility visits;
- (e) preparation of responses to questions or requests for information from the Sponsors;
- (f) preparation of the Proponent's own RFIs during the clarification process; and
- (g) negotiations.

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

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

(1) During the RFP Process, the Proponent is required to obtain, and 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 this RFP Section 3.11.1(1)(a) and (b), whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Site, Existing Facility or at any facilities or premises of the Sponsors for any purpose whatsoever:

- (a) Commercial/Comprehensive General Liability insurance, having an inclusive limit of not less than \$5,000,000 for each occurrence or accident and covering all sums which the Proponent, a Proponent Team Member or any other person 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 Sponsors (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 Sponsors or the Government of Ontario; and
- (b) Motor Vehicle Liability insurance, in the amount of \$2,000,000 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, Existing Facility or on or at any facilities or premises of the Sponsors.

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

(3) If a Proponent proposes to perform any investigations at the Site or Existing Facility the risk related to which may not be fully insured under the above policies, the Sponsors

may, in their sole discretion, require the Proponent at its own cost and expense to obtain insurance additional to that specified in RFP Sections 3.11.1(1)(a) and (b).

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

3.11.2 Workplace Safety during the RFP Process

(1) As a condition of allowing access to the Site, Existing Facility, or any facilities or premises of the Sponsors, each of the Sponsors may, in its sole discretion, require Proponents to provide evidence acceptable to the Sponsors that the Proponent and its Proponent Team Members are registered with the Workplace Safety Insurance Board of Ontario, if such registration is required by Applicable Law, or, if such registration is not required by 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 under the Project Agreement will be obtained under the Infrastructure Ontario Construction Insurance Program (“**IOCIP**”). If the 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 Work phase construction insurance.

3.12 Review of Mechanical and Electrical Subcontractors Qualifications

(1) The Sponsors may, in their sole discretion, carry out a review and pre-screening process, during the RFP Process, with respect to the Proponent's proposed mechanical and electrical subcontractors (the “**Mechanical/Electrical Review Process**”).

(2) Whether the Sponsors intend to carry out a Mechanical/Electrical Review Process and any process that the Sponsors intend to follow, is set out in the RFP Data Sheet. All submission requirements with respect to the Mechanical/Electrical Review Process are set out in the RFP Data Sheet and submission deadlines related to the Mechanical/Electrical Review Process are set out in the Timetable.

(3) The Mechanical/Electrical Review Process will consist of a pre-screening of mechanical and electrical subcontractors proposed by Proponents at the beginning of the RFP Process that will result in the identification, by the Sponsors, of mechanical and electrical

subcontractors who have successfully passed the Mechanical/Electrical Review Process (the “**Pre-Screened Mechanical and Electrical Subcontractors**”).

(4) The evaluation criteria that the Sponsors intend to apply during the Mechanical/Electrical Review Process are set out in the RFP Data Sheet.

(5) If a mechanical or electrical subcontractor fails to pass the Mechanical/Electrical Review Process, the Sponsors will inform the Proponent that the relevant mechanical or electrical subcontractor has not met the requirements of the Mechanical/Electrical Review Process, and will provide the Proponent with a list of the Pre-Screened Mechanical and Electrical Subcontractors.

(6) If the Preferred Proponent fails to include only Pre-Screened Mechanical and Electrical Subcontractors, to the satisfaction of the Sponsors in their sole discretion, the Sponsors may, in their sole discretion, disqualify the Proponent in accordance with RFP Section 7.1.2.

SECTION 4 - PROPOSAL – FORM AND CONTENT REQUIREMENTS

4.1 General Submission Requirements

4.1.1 Format of the Proposal

Proponents shall submit Proposals organized in accordance with and in the format set out in the RFP Section 4.1.2, Schedules 2 and 3 to the RFP and all instructions contained in Schedules 2 and 3. The Proponents shall submit their documents in two phases in accordance with RFP Section 5.1.1.

4.1.2 Content of the Proposal – General

(1) Proponents shall submit Proposals in the following separately bound parts (Parts A, B, C, and D) as follows:

- (a) Phase 1 – Proposal Submission (“**Phase 1 Proposal Documents**”) (submitted prior to the Initial Submission Deadline):
 - (i) Part A – fully completed forms in accordance with the completion instructions set out in Schedule 2, as follows:
 - (A) Form 2-1 – Phase 1 Proposal Submission Form;
 - (B) Form 2-2 – Cost of the Work Form;
 - (C) Form 2-3 – [Intentionally Deleted];

- (D) Form 2-4 – Lender’s Identification and Financing Commitment Form (including the form of Financing Plan with actual amounts bulleted); and
- (E) Form 2-5 – Surety’s Consent.
- (ii) Part B – fully completed forms in accordance with the completion instructions set out in Schedule 2, as follows:
 - (A) Form 2-6 – Contract Time Form;
 - (B) Form 2-7 – Proposed Construction Schedule;
 - (C) Form 2-8 – Revised Key Personnel Form; and
 - (D) Form 2-9 – Procurement Monitoring and Implementation Plan.
- (b) Phase 2 Proposal Submission (“**Phase 2 Proposal Documents**”) (submitted prior to the Final Submission Deadline):
 - (i) Part C – fully completed Forms in accordance with the completion instructions set out in Schedule 3, as follows:
 - (A) Form 3-1 – Phase 2 Proposal Submission Form;
 - (B) Form 3-1A – Certificate of Officer;
 - (C) Form 3-5 – Unit Prices Form;
 - (D) Form 3-6 – Sponsors’ Alternative Prices Form;
 - (E) Form 3-7 – Sponsors’ Separate Prices Form;
 - (F) Form 3-9 – Breakdown of Cost of the Work (By Division);
 - (G) Form 3-10 – Itemized Pricing Form; and
 - (H) Form 3-11 – Contractor Value-Added Suggested Alternative Prices Form.
 - (ii) Part D – as follows (submitted in a separately sealed and labelled envelope):
 - (A) Form 3-2 – Guaranteed Price Form;

(B) Form 3-3 – Financing Plan; and

(C) Form 3-4 – Financial Model.

4.1.3 Instructions for Parts A and B of the Phase 1 Proposal Documents

Proponents shall submit each of Parts A and B of their Phase 1 Proposal Documents in accordance with the instructions on each of the applicable forms as attached in Schedule 2 to this RFP. Proponents are cautioned to review and follow the instructions that appear in each of the applicable forms. If any of the forms listed in RFP Section 4.1.2(1)(a) are not required to be submitted by the Proponent, those forms that are not required are listed in the RFP Data Sheet.

4.1.4 Instructions for Parts C and D of Phase 2 of the Proposal Documents

(1) Proponents shall submit each of Supplementary Parts C and D in accordance with the instructions set out on each of the applicable forms and Form 3-3 in Schedule 3 to this RFP. Proponents are cautioned to review and follow the instructions that appear in each of the applicable forms and in Form 3-3. If any of the forms listed in RFP Section 4.1.2(1)(b) are not required to be submitted by the Proponent, those forms that are not required are listed in the RFP Data Sheet.

(2) For greater clarity, Proponents shall submit the financing plan (“**Financing Plan**”) and related required documents (including any Innovation Submissions) in accordance with the requirements set out in Form 3-3, and the financial model (“**Financial Model**”) and related required documents in accordance with the requirements set out in Form 3-4.

4.2 **Surety’s Consent**

(1) Each Proponent must submit a surety’s consent as set out in Form 2-5 of Schedule 2 of this RFP (“**Surety’s Consent**”) in order to secure the issuance of one performance bond and one labour and material payment bond for the Project as required by the Project Agreement Documents. Proponents are advised that, in submitting the Surety’s Consent, the Proponent may submit either,

- (a) a Surety’s Consent duly completed by a Surety substantially in the same form and content as set out in Schedule 2, including the form of performance bond and labour and material payment bond attached; or
- (b) a Surety’s Consent duly completed by a Surety substantially in the form set out in Schedule 2 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 Documents, 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)(b) the Sponsors may, in their sole discretion, accept or reject the form of Surety's Consent including the proposed form of performance bond and labour and material payment bond 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 bond and labour and material payment bond attached to the Surety's Consent;
- (b) any ancillary amendments to the Project Agreement Documents 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 the 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 bond and labour and material payment bond, submitted in the Proponent's Proposal.

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

SECTION 5 - SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

5.1 Submission of Proposal

5.1.1 General Submission Requirements

- (1) Each Proponent shall submit,
 - (a) one original of its Phase 1 Proposal Documents before the Initial Submission Deadline; and
 - (b) one original and 8 copies of its Phase 2 Proposal Documents and 8 copies of its Phase 1 Proposal Documents before the Final Submission Deadline.

Each of the original and copies shall be clearly labelled with the name of the Project and the name of the Contact Person and marked as either “Original” or “Copy 1 of 8” etc. For the purposes of this RFP Process, the determination of whether either the Phase 1 Proposal Documents or the Phase 2 Proposal Documents were submitted before the Initial Submission Deadline or Final Submission Deadline, as applicable, shall be based on the time and date stamp the Proponent must ensure it receives at the address for submission set out in the RFP Data Sheet. Phase 1 Proposal Documents received after the Initial Submission Deadline and Phase 2 Proposal Documents received after the Final Submission Deadline, as documented by the time and date stamp, shall be returned unopened to the sender. If there is any difference between the original and the copies of either the Phase 1 Proposal Documents or the Phase 2 Proposal Documents, the applicable original shall govern.

(2) Proponents shall submit their Phase 1 Proposal Documents and Phase 2 Proposal Documents by sending them by pre-paid courier or hand delivery to Infrastructure Ontario at the address set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that its Phase 1 Proposal Documents and Phase 2 Proposal Documents are received by Infrastructure Ontario prior to the Initial Submission Deadline or Final Submission Deadline, as applicable, and to ensure that the Proponent receives a date and time stamp receipt from Infrastructure Ontario confirming the timely delivery of each of the Phase 1 Proposal Documents and Phase 2 Proposal Documents.

(3) Proponents shall provide both hard copies and an electronic copy of both the Phase 1 Proposal Documents and Phase 2 Proposal Documents on USB flash drives in PDF format or Microsoft Word. The USB flash drives shall be set up and organized in the format as set out in RFP Section 4.1.2(1). The Sponsors will not accept either Phase 1 Proposal Documents or Phase 2 Proposal Documents delivered by electronic mail.

(4) If there is any difference whatsoever between the electronic copy of either the Phase 1 Proposal Documents or Phase 2 Proposal Documents and the applicable original, the applicable original as submitted in hard copy shall govern.

5.1.2 Two Phased Submission

(1) Proponents shall submit their Proposals in two phases in accordance with RFP Section 4.1.2. Notwithstanding the two phase submission of Proposals, the Proponents' obligations under the RFP exist as of the Initial Submission Deadline in accordance with the RFP Documents and in accordance with the following rules:

- (a) The Proponent acknowledges and agrees that it is not permitted to withdraw its Phase 1 Proposal Documents after the Initial Submission Deadline or its Phase 2 Proposal Documents after the Final Submission Deadline;
- (b) The Proponent acknowledges and agrees that it is not permitted to change or amend its Phase 1 Proposal Documents in any way whatsoever, including a change or amendment to correct an error in the Phase 1 Proposal Documents, after the Initial Submission Deadline and, for clarity, is not permitted to use the Phase 2 Proposal Documents to attempt to change or amend the Phase 1 Proposal Documents in any way whatsoever;
- (c) The Proponent acknowledges and agrees that the amount set out in the Cost of the Work Form shall be the same as the Cost of the Work contained in the Guaranteed Price Form;
- (d) The Proponent acknowledges and agrees that it is not permitted to amend its form of Financing Plan from that submitted as part of the Phase 1 Proposal Documents; and
- (e) If a Proponent has submitted Phase 1 Proposal Documents and fails to submit Phase 2 Proposal Documents (or fails to submit them prior to the Final Submission Deadline), the Phase 1 Proposal Documents will be returned to the Proponent.

(2) If there is any inconsistency whatsoever between the Phase 1 Proposal Documents and the Phase 2 Proposal Documents, the Phase 1 Proposal Documents shall govern. In particular,

- (a) if there is any inconsistency or conflict between the Cost of the Work Form and any breakdown of the Cost of the Work (submitted with the Phase 2 Proposal Documents), the Cost of the Work Form shall govern; and

- (b) if there is any inconsistency or conflict between the Lender's Identification and Financing Commitment Form and the Phase 2 Proposal Documents, the Lender's Identification and Financing Commitment Form shall govern.

5.2 Withdrawal of Proposals

- (1) A Proponent may withdraw,
 - (a) its Phase 1 Proposal Documents after submission but prior to the Initial Submission Deadline; or
 - (b) its Phase 2 Proposal Documents after submission but prior to the Final Submission Deadline, provided that its Phase 2 Proposal Documents are re-submitted prior to the Final Submission Deadline,

only by giving written notice to the Contact Person prior to the applicable deadline.

- (2) The Sponsors will return, unopened, Phase 1 Proposal Documents or Phase 2 Proposal Documents (or both, as applicable) that have been withdrawn in accordance with this RFP Section 5.2.

5.3 Amendment of Proposal

Proponents may amend either their Phase 1 Proposal Documents or their Phase 2 Proposal Documents after submission but only if the Phase 1 Proposal Documents or Phase 2 Proposal Documents are resubmitted before the Initial Submission Deadline or Final Submission Deadline, as applicable, in accordance with the following:

- (a) the Proponent shall withdraw its
 - (i) original Phase 1 Proposal Documents prior to the Initial Submission Deadline; or
 - (ii) its Phase 2 Proposal Documents prior to the Final Submission Deadline,

by notifying the Contact Person in writing before the deadline; and

- (b) the Proponent shall submit revised replacement documents in accordance with the RFP Documents, including for greater clarity, RFP Section 5.1 and shall only submit revised replacement documents:
 - (i) prior to the Initial Submission Deadline in respect of Phase 1 Proposal Documents; and

- (ii) prior to the Final Submission Deadline in respect of Phase 2 Proposal Documents.

5.4 Proposal Irrevocability

(1) Except as provided in RFP Section 5.5(1) and RFP Section 5.5(3) and subject to RFP Section 5.4 and to the Proponent's right to withdraw in accordance with RFP Section 5.2, each Proposal (for clarity, each of the Phase 1 Proposal Documents and Phase 2 Proposal Documents) shall be irrevocable and shall remain in effect and open for acceptance for 120 days after the Final Submission Deadline (the "**Proposal Validity Period**") or until Financial Close, whichever occurs first.

(2)

- (a) After the Final Submission Deadline, the Indicative Credit Spread Benchmark(s) (if applicable) and, subject to RFP Section 5.4(3)(e), the election pursuant to RFP Section 5.4(2)(b) shall not change.
- (b) On the Final 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
 - (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 5.4(4.1), Credit Spread(s) from the Final 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 Final 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 5.4. The Sponsors shall confirm whether or not they accept the formula submitted by the Proponent no later than 5 Business Days prior to the Final 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 5.4 shall apply as if any such formula had not been provided to the Sponsors by the Proponent.

(3) Each Proponent that has provided notification pursuant to RFP Section 5.4(2)(b)(i) shall, prior to the identification of Preferred Proponent under RFP Section 8.1 and no later than 12:00:00 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 Phase 2 Proposal Documents 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:
 - (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),

and 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 Form 3-2 – Guaranteed Price 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 Final 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 Final 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;

- (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 Final 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 Final 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;
- (E) written confirmation that the Proponent has not changed any variables in the Financial Model or made any revisions to Part D of the Phase 2 Proposal Documents 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); and
 - (F) if applicable and exclusively as a result of a change of Credit Spread(s), any revision in the Guaranteed Price reflecting the financial effect of the Innovation Submission(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 Final 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 Final Submission Deadline is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Proponent from the Final 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; 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 Final 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 Final Submission Deadline is consistent with the movement, if any, in the Indicative Credit Spread Benchmark(s) of the Proponent from the Final 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;

- (iii) as of the First Credit Spread Lock-in Date, but subject to RFP Sections 5.4(4), and 5.5(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 Phase 2 Proposal Documents shall apply until the expiry of the Proposal Validity Period; and
- (c) if a Proponent fails to confirm or submit a change to the Credit Spread(s) in accordance with RFP Section 5.4(3) 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 Final Submission Deadline to the First Credit Spread Lock-in Date and require the Proponent to submit the information set out in RFP Section 5.4(3)(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 Final Submission Deadline and require

- the Proponent to submit the information set out in RFP Section 5.4(3)(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 5.4(3) is not consistent with the Indicative Credit Spread Benchmark(s), the Sponsors may:
- (i) require the Proponent to re-submit pursuant to RFP Section 5.4(3)(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 5.4(3) 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) from the First Credit Spread Lock-in Date to Financial Close.

(4) If the Preferred Proponent has provided notification pursuant to RFP Section 5.4(3)(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 Phase 2 Proposal Documents, and as submitted pursuant to RFP Section 5.4(4) 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 Form 3-2 – Guaranteed Price 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 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;

- (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 Part D of the Phase 2 Proposal Documents, 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); and
- (F) if applicable and exclusively as a result of a change of Credit Spread(s), any revision in the Guaranteed Price reflecting the financial effect of the Innovation Submission(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 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; 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 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; and

- (iii) as of the Final Credit Spread Lock-in Date, but subject to RFP Section 5.5(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 Phase 2 Proposal Documents 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 5.4(4) 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) 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 require the Proponent to submit the information set out in RFP Section 5.4(4)(b)(i); 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 5.4(4)(b)(ii).

(4.1) Each Proponent that has provided notification under RFP Section 5.4(2)(b)(ii) or RFP Section 5.4(2)(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 (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 Form 3-3 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 Form 3-2 – Guaranteed Price Form revised only to reflect the Proponent's decrease(s) to its Credit Spread(s);
- (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); and
- (e) if applicable and exclusively as a result of the decrease(s) to the Credit Spread(s), any revision in the Guaranteed Price reflecting the financial effect of the Innovation Submission(s).

(4.2) 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 Final 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 Final Submission Deadline to the First Credit Spread Lock-In Date or from the First Credit Spread Lock-in Date to the Final Credit Spread Lock-in Date, as the case may be; provided that if the Sponsors exercise their rights under this Section 5.4(4.2)(a), any deemed amendment to the 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.

(4.3) 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 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 Section 2(h) of Form 3-4; 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 Infrastructure Ontario 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 Infrastructure Ontario, acting in their sole discretion, then such higher Credit Spread will be reflected in the Cost of Financing payable by Infrastructure Ontario as set out in the Financial Model submitted by the Preferred Proponent prior to Financial Close using the optimization procedure set out in Section 2(h) of Form 3-4. If such explanation is not accepted by Infrastructure Ontario, acting in its sole discretion, Infrastructure Ontario may exercise its rights set out in RFP Section 5.4(6) without limiting any other rights under this RFP; 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 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 under RFP Section 5.4(4)(a) the Sponsors shall also 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 Infrastructure Ontario, acting reasonably, 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 Phase 2 Proposal Documents, including as revised under RFP Sections 5.4(3) or 5.4(4), which, subject to Section 5.4(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 any 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 Section 5.4(5), the Preferred Proponent shall submit a draft thereof (the “**Draft Lenders Commitment Letter**”) to Infrastructure Ontario for review and comment by Infrastructure Ontario.

(6) If, (i) in respect of the Final Credit Spread Election Facilities the amendment or confirmation of the Credit Spread(s) under RFP Section 5.4(4) is not consistent with the Indicative Credit Spread Benchmark(s) of the Preferred Proponent, in the sole discretion of Infrastructure Ontario, 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 5.4(4) is not, in the sole discretion of Infrastructure Ontario, acceptable to Infrastructure Ontario, or (iii) any other of the requirements respecting the amendment or confirmation of the Credit Spread(s) under RFP Section 5.4(4) have not, in the sole discretion of Infrastructure Ontario, been satisfied or complied with, or (iv) the Preferred Proponent’s Lenders have not

provided a Lenders' Commitment Letter which, in Infrastructure Ontario's sole discretion, satisfies the requirements of RFP Section 5.4(5), then:

- (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 Section 5.4(4) have not been satisfied or complied with (the "**Rectification Notice**"). The Preferred Proponent shall have 7 Business Days following the date of the Rectification Notice to rectify the failure to satisfy the requirements as set out in the 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 Rectification Notice (the "**Rectification Notice Response**").
- (b) If Infrastructure Ontario, in its sole discretion: (A) is not satisfied with the Rectification Notice Response or with the Lenders Commitment Letter, and/or (B) determines that the Guaranteed Price of the Preferred Proponent's Part D, Phase 2 Proposal Documents as revised by RFP Section 5.4(3) exceeds the budget for the Project; and/or (C) determines that the Guaranteed Price of the Preferred Proponent's Part D, Phase 2 Proposal Documents as revised by RFP Section 5.4(4) changes the overall rank of the Preferred Proponent relative to the other Proponents, Infrastructure Ontario may, in its 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)) to confirm or change its Credit Spread(s) in accordance with RFP Section 5.4(4), and at the same time request the Preferred Proponent to again confirm or change its Credit Spread(s) in accordance with RFP Section 5.4(4), 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 5.4(4). 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;
- (iii) direct the Preferred Proponent to terminate its relationship with its Lenders, and Infrastructure Ontario 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 Part D of its Phase 2 Proposal Documents to incorporate the financial terms and conditions of the Lenders that are successful in the competition. Based thereon, Infrastructure Ontario may, in its 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 Submission Deadline.

Infrastructure Ontario may, in its sole discretion and for greater clarity, elect to change which of the Section 5.4(6)(b) processes to employ at any time during the application of Section 5.4(6)(b). In the event that Infrastructure Ontario has determined to proceed under any of RFP Sections 5.4(6)(b)(i), (ii) or (iv), then the provisions of RFP Sections 8.1(2), (3), (4) or (5) shall apply to such processes. Without limitation to the foregoing, and in its sole discretion, Infrastructure Ontario may, if it is not satisfied with the 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, Infrastructure Ontario 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 Infrastructure Ontario.

- (c) The Sponsors may, in their sole discretion, exercise any of its rights under RFP Section 5.4(6)(b)(i) to (v) in the event that the Sponsors determine, in their sole discretion, that the Lenders have made any change to the Draft Lenders Commitment Letter in the Lenders Commitment Letter.
- (d) In the sole discretion of Infrastructure Ontario, 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 Infrastructure Ontario of the Termination Notice. The return of the Letter of Credit 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 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 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.

5.5 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 that are still being considered in the evaluation process. Any agreement to extend the Proposal Validity Period shall be implemented by a written agreement between the Infrastructure Ontario and those Proponents that have so agreed together with the delivery by such Proponents with an amended or replacement Form 2-5-Surety's Consent reflecting the extended Proposal Validity Period. A Proponent may, in its discretion, refuse to extend the Proposal Validity Period in accordance with the following:

- (a) notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proposal shall continue to be valid in accordance with the original Proposal Validity Period; and

- (b) if the Sponsors determine that they will be unable to determine the Preferred Proponent prior to the expiration of the original Proposal Validity Period, the Sponsors may discontinue the evaluation of a Proponent's Proposal if that Proponent has refused the Sponsors' request to extend the Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.

(2) In respect of the Preferred Proponent, the Sponsors shall be considered to have accepted the Preferred Proponent's Proposal, including its revised Credit Spread(s) pursuant to RFP Section 5.4; 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. For greater clarity, the Preferred Proponent shall maintain its prices as set out in its Guaranteed Price Form (as submitted on the Final Submission Deadline or, if applicable, as amended pursuant to RFP Section 5.4; or during any negotiations process pursuant to RFP Section 5.4(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) Despite RFP Section 5.5(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 Documents 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 a period of 95 calendar days after the date of submission of the revised prices or the date of agreement to any revised terms and conditions, as applicable.

(4) Notwithstanding RFP Sections 5.4 or 5.5(1), 5.5(2) or 5.5(3), the adjustments on Financial Close that are set out in Schedule 3 to this RFP shall remain applicable.

5.6 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's financial advisor will be required to confirm on behalf of the Proponent in its letter to be delivered under Form 3-3 in Schedule 3 to this RFP that the Lenders have not entered into any exclusivity arrangement with the Proponent. 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 interests screens to ensure that each Proponent is represented by a discrete team of Lender personnel;

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

(2) Lenders participating in a Proposal (“**Participating Lenders**”) shall not be Affiliates of any of the Proponent Team Members participating in that Proposal (“**Participating Proponent Team Members**”) (other than any other Participating Lender or a financial advisor wholly owned by a Participating Lender) and shall act at all times at arm's length to every other Participating 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. The Evaluation Committee may be assisted by and receive advice from any of the Sponsors' Advisors and any other employees or representatives of the Sponsors in any manner determined necessary or desirable by the Sponsors.

(2) If a member of the Evaluation Committee becomes unable to continue serving on the Evaluation Committee in the middle of a step in the evaluation process, the evaluation comments and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. Whether or not an Evaluation Committee member, in these circumstances, is replaced is in the sole discretion of the Sponsors.

6.2 Sponsors' Clarification and Verification of Proposals

- (1) The Sponsors may,
 - (a) require the Proponent to clarify or verify the contents of its Proposal or any statement made by the Proponent;

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

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

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

6.3 Steps in the Evaluation Process

6.3.1 Step 1 – Compliance of Proposals

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

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

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

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

(4) A requirement in either this RFP or in Schedule 2 or Schedule 3 that a Proponent “must” or “shall” do anything is not intended to supersede this RFP Section 6.3.1 or, for greater clarity, to supersede the concepts of “comply”, “compliance” or “material deviation” set out in this RFP Section 6.3.1.

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

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

(7) For the purpose of clarity, each Proponent acknowledges and agrees that the Sponsors’ evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsors may waive failures to comply that, in the Sponsors’ sole discretion, do not constitute a material deviation in accordance with this RFP Section 6.3.1. For clarity, the Sponsors may also waive a material deviation under RFP Section 10.2(3).

6.3.2 Step 2 – Review of the Phase 1 and Phase 2 Proposal Submission Forms

(1) In Step 2, the Sponsors shall review the Phase 1 and Phase 2 Proposal Submission Forms in respect of the Project to,

- (a) ensure that the form has been properly completed and signed;
- (b) ensure that there have been no changes to the Proponent or the Proponent Team Members from their Prequalification Submissions, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.6; and
- (c) assess the Conflict of Interest and Confidential Information section of the Phase 1 and Phase 2 Proposal Submission Forms.

6.3.3 Step 3 – Review of the Phase 1 Proposal Documents – Part B

(1) In Step 3 of the evaluation process, the Sponsors will,

- (a) review and score the quality and credibility of the Proposed Construction Schedule in respect of the Project and assess which Proposal offers the best value (from a pricing perspective) to the Clients; and

- (b) review the Revised Key Personnel Form in respect of the Project to assess whether any additional Key Personnel that were not previously reviewed as part of the RFQ process are acceptable to the Sponsors.

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

6.3.4 Step 4 – Review of the Phase 2 Proposal Documents – Part C

(1) In Step 4 of the evaluation process the Sponsors will review the Proponent's Financing Plan to assess whether the Financing Plan and other financial information submitted in respect of Form 3-3 of this RFP and the Financial Model in respect of Form 3-4 of this RFP establish, to the Sponsors' satisfaction, that the Proponent has the ability to obtain satisfactory financing and achieve Financial Close in a timely fashion.

(2) The Sponsors will review and evaluate the Proponent's Financing Plan submitted in accordance with the requirements of RFP Schedule 3, Form 3-3 and will use the following criteria to assess, in the Sponsors' sole discretion, the achievability and robustness of the proposed Financing Plan:

- (a) levels of commitments provided by all investors (including equity funds, lenders, etc.);
- (b) demonstration that at least 85% of the Guaranteed Price shall be made available by third party Participating Lenders acting at arm's length from Participating Team Members;
- (c) ability to raise sufficient financing to reach Financial Close; and
- (d) demonstrated evidence of ability to deliver the Project in a manner that meets the needs and objectives for the Project.

(3) If the Proponent's Financing Plan is submitted in accordance with the requirements of RFP Schedule 3, Form 3-3 and meets the criteria set out in Section 6.3.4(2)(a), (b) and (c), the Sponsors will give the Proponent's Financing Plan a satisfactory rating ("**Satisfactory**"). If the Proponent's Financing Plan is not submitted in accordance with the requirements of RFP Schedule 3, Form 3-3 and/or does not meet the criteria set out in Section 6.3.4(2)(a), (b) and (c), the Sponsors will give the Proponent's Financing Plan an unsatisfactory rating ("**Unsatisfactory**").

- (4) If the Sponsors, in their sole discretion,

- (a) give the Proponent's Financing Plan an "Unsatisfactory" rating in accordance with Section 6.3.4(3); or
- (b) otherwise determine that the Proponent is unlikely to obtain satisfactory financing to achieve Financial Close,

the Sponsors may, in their sole discretion, reject the Proponent's Proposal or may require a Proponent to submit additional or alternate financing information.

(5) The Sponsors will review and score the Guaranteed Price Form.

(6) The Sponsors will also review, without scoring, any Innovation Submissions submitted by the Proponent. While a Proponent's Innovation Submission will not be scored by the Sponsors, it may be the subject of negotiation during the negotiations process carried out in accordance with RFP Section 8.1.

6.3.5 Step 5 – Establishing a Final Proposal Score

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

Scored Category	Weighting
Contract Time and Proposed Construction Schedule Score	10%
Guaranteed Price Score	90%
Final Proposal Score	100%

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

6.3.6 Step 6 – Ranking the Proponents

(1) In Step 6, the Evaluation Committee shall rank only those Proponents that have met all requirements in Steps 1 through 5 and shall base the ranking on the Final Proposal Score.

(2) In the event of a tie in the Final Proposal Score between two Proponents, the Sponsors may, in their sole discretion, give the higher ranking to the Proponent proposing the lower Guaranteed Price in its Proposal.

SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

- (1) The Sponsors shall determine, in their sole discretion,
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether a Proposal is compliant with the RFP Documents;
 - (c) whether a failure to comply constitutes a material deviation;
 - (d) whether Key Personnel who were not named in a Prequalification Submission are acceptable to the Sponsors;
 - (e) the Guaranteed Price offers the best value (including, but not limited to, from a pricing perspective) to each respective Client;
 - (f) whether the proposed Innovation Submissions will or will not be accepted by the Sponsors;
 - (g) the Final Proposal Score;
 - (h) the rankings of the Proposals; and
 - (i) whether a Proposal or a Proponent,
 - (i) is disqualified; or
 - (ii) will cease to be considered in the evaluation process.

(2) The Sponsors' discretion in determining compliance, scores, ranking and disqualification of the Proponents and their Proposal is not limited or restricted in any way by the fact that a prequalification process preceded this RFP Process.

(3) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of the Proposals or in the exercise of any of the Sponsor's 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 Sponsor's sole discretion credible information.

7.1.2 Disqualification

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

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3;
- (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, 3.3.3 or 3.12(6);
- (d) the Proponent fails to comply with the laws of the Province of Ontario or of Canada, as applicable;
- (e) the Proposal contains false or misleading information or a misrepresentation;
- (f) the Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Proponent:
 - (i) does not receive a waiver from the Sponsors in accordance with RFP Section 3.9.1(6) or does not receive a consent in accordance with RFP Section 3.9.2(4), as applicable; or
 - (ii) fails to substitute the person or entity giving rise to the Conflict of Interest, in accordance with RFP Section 3.9.1(5);
- (g) if, in the opinion of the Sponsors, acting reasonably, the Proponent, its employees, agents, consultants or representatives directly or indirectly colluded with one or more other Proponents or any of its or their respective employees, agents, consultants or representatives in the preparation or submission of its Proposal or otherwise contravened RFP Section 3.3.4;
- (h) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (i) 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;

- (j) the Proponent submits the Phase 1 Proposal Documents, but fails to properly submit the Phase 2 Proposal Documents; or
- (k) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction.

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

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

- (1) Based on the Final Proposal Scores, the Sponsors may, in their sole discretion,
 - (a) at any time prior to the expiration of the Proposal Validity Period, identify the highest ranked Proponent as the Preferred Proponent and either negotiate with the highest ranking Proponent or accept the Proponent's Proposal as submitted, including or excluding its Innovation Submissions;
 - (b) identify the two highest ranking Proponents as the First Negotiations Proponent (highest ranked) and the Second Negotiations Proponent (second highest ranked) (the "**Negotiations Proponents**") and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the Sponsors conclude successful negotiations as the Preferred Proponent; or
 - (c) enter into separate and distinct but contemporaneous negotiations with the First and Second Negotiations Proponents and identify a Preferred Proponent as a result of those negotiations.
- (2) The Sponsors may use the negotiations process to negotiate any aspect of the Negotiations Proponents' Proposals or the Project Agreement Documents, or both, including, for clarity, any amendments to the Project Agreement Documents that are reasonably required to accommodate the Negotiations Proponents' financing arrangements or impacts of a Relevant Change in Law arising after the Initial Submission Deadline.
- (3) The Sponsors further reserve the right, during the negotiations process, to create and implement a specified interim completion payment amount, which would be payable by the

Sponsors to Project Co on a specified interim completion payment date following the completion of a defined phase of the Work (the “**Interim Completion Payment**”) and to make any amendments to the Project Agreement Documents that are reasonably required for the creation and implementation of this Interim Completion Payment.

(4) Except as provided in RFP Section 5.5(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.

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

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

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.

(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 4 to this RFP to secure the Preferred Proponent’s obligations in accordance with RFP Section 9.1(5). The Preferred Proponent may, with the prior written consent of the Sponsors, which consent may be withheld in the sole discretion of the Sponsors, provide multiple irrevocable standby letters of credit from Proponent Team Members as approved and confirmed by the Sponsors (each a “**Letter of Credit Provider**”) totalling the amount specified in the RFP Data Sheet and in the form attached as Schedule 4 to this RFP to secure the Preferred Proponent’s obligations in accordance with RFP Section 9.1(5).

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

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

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

(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 5.4(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;
- (c) the Sponsors may draw upon any Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Proponent Team Member;
- (d) the provision of multiple letters of credit shall not in any way prejudice or adversely affect the rights of the Sponsors to draw on any Letter of Credit in accordance with this RFP, including in the event that Sponsors are entitled to draw on the Letter of Credit in accordance with RFP Section 9.1(5) and such circumstance is not the result of any act or omission of the Letter of Credit Provider whose Letter of Credit is drawn upon.

9.2 Preferred Proponent Obligations

(1) Once the Sponsors have identified a Preferred Proponent and notified the Preferred Proponent of such identification, the Preferred Proponent shall execute the applicable Project Agreement Documents based on the Project Agreement Documents in substantially the same form and context as finalized prior to the Final Submission Deadline or as revised and agreed to by the Proponent and the Sponsors, to achieve Commercial Close on or before the expiration of 10 calendar days after the Preferred Proponent's receipt of that notice or such other earlier or later date as the Preferred Proponent and the Sponsors may agree in writing.

(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 Infrastructure Ontario may reasonably request from time to time.

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

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

10.1 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion,
- (a) reject any or all of the Proposals;
 - (b) reject an Innovation Submission in any Proposal;
 - (c) reject the Key Personnel proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
 - (d) reject the Financing Plan contained in a Proposal and thereby reject the Proposal;
 - (e) request a replacement Financing Plan if the Financing Plan contained in the Proposal is, in the opinion of the Sponsors, uncompetitive or incomplete, or both;
 - (f) accept any Proposal;
 - (g) if only one Proposal is received, elect to accept or reject it or enter into negotiations with the Proponent;

- (h) elect to discontinue the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before Commercial Close;
- (i) at any time prior to Commercial Close, engage, on behalf of the Clients, any one or more of the Proponents to perform any part of the Work or other related work as early start works provided, however, that in the event that the Sponsors do so nothing therein shall create any obligations under this RFP or otherwise with respect to any of the Proponents other than as set out in the express agreement with respect to the early start works.
- (j) alter the Timetable, the RFP Process or any other aspect of this RFP; and
- (k) cancel this RFP Process and subsequently advertise or call for new submission(s) 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 Form 3-1A – Certificate of Officer to this RFP. Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion, require at any time, including any time after a Proponent has submitted its Proposal, that any Proponent Team Member of any Proponent resubmit a certificate of an officer from such Proponent Team Member in the form attached as Form 3-1A – Certificate of Officer to this RFP.

(3) Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion:

- (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures, with respect to bidding practices or ethical behaviour of the Proponents and Proponent Team Members; and
- (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the Sponsors with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.

(4) If a financial institution put forward as a Proponent Team Member and acting in a financial advisory capacity is not an Affiliate of any of the Proponent Team Members (an

“**Exempt Financial Institution**”), then RFP Sections 10.1(2) and 10.1(3) shall not apply to any such Exempt Financial Institution

(5) Further to RFP Sections 10.1(2) and 10.1(3), and in the event that any Proponent and/or Proponent Team Member:

- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to RFP Sections 10.1(2) and 10.1(3); or
- (b) complies with Sponsors’ requirement as prescribed in accordance with RFP Sections 10.1(2) and 10.1(3), but the Sponsors determine that any Proponent and/or Proponent Team Member has or may have engaged in inappropriate bidding practices or unethical behaviour,

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

10.2 Special Circumstances

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

- (a) take any action in accordance with RFP Section 10.1;
- (b) carry out a process whereby all Proponents are directed to correct the material deviations in their Proposals for re-submission, without a change in their Guaranteed Prices (as set out in the Guaranteed Price Form) or their Proposed Construction 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;
- (b) more than one Proposal, but only one compliant Proposal; or
- (c) one Proposal and that Proposal is non-compliant

the Sponsors may, in their sole discretion,

- (d) take any action in accordance with RFP Section 10.1(1);

- (e) in respect of the single non-compliant Proposal referred to in RFP Section 10.2(2)(c), take any action in accordance with RFP Section 10.2(1); or
- (f) cancel this RFP and subsequently enter into negotiations with the Proponent that submitted a Proposal.

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

(4) It at any time prior to the Initial Submission Deadline any Proponent withdraws 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 “**Invited Proponent**”) to participate under the RFP Process to replace such Proponent. For clarity, the Invited Proponent must have submitted a complete Prequalification Submission under and in accordance with the terms and conditions of the RFQ and achieved the minimum score required by Section 6.1(4) of the RFQ. Upon the Invited Proponent’s written acceptance of such invitation, the Invited Proponent shall become a Prequalified Party and a Proponent under this RFP.

10.3 Sponsors’ Liability for Proponent’s Costs

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

10.4 Applicable Law, Attornment and Limit on Liability

- (1) This RFP shall be governed by and construed in accordance with the Applicable Law.
- (2) The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP Process on any jurisdictional basis, including *forum non conveniens*; and

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

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

- (a) the Proposal preparation costs that the Proponent seeking damages from the Sponsors can demonstrate; or
- (b) \$500,000.

10.5 Licenses, Permits, etc.

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

10.6 Power of Legislative Assembly

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

SECTION 11 - NOTIFICATION AND DEBRIEFING

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

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

SECTION 12 - DEFINITIONS

12.1 General

(1) Unless otherwise defined in this RFP Section 12, capitalized terms and expressions used in this RFP have the meaning given to them in the Project Agreement Documents. 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.

12.2 RFP Definitions

Whenever used in this RFP,

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

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

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

(4) “Background Information” means various types of information provided by the Sponsors and is defined in the RFP Section 2.4(1)(b);

(5) “Bonding Submission” is defined in RFP Section 4.2(2);

(6) “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.

(7) “Clients” means the clients listed in the RFP Data Sheet in respect of RFP Section 1.1(1);

(8) “Commercial Close” means the date the Project Agreement is signed by the Preferred Proponent and Client.

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

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

- (11) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (12) “Conflict of Interest” is defined in RFP Section 3.9.1(7);
- (13) “Contact Person” is defined in RFP Section 3.2.1;
- (14) “Contract A” is defined in RFP Section 1.1(3);
- (15) “Credit Spread Election Facilities” is defined in RFP Section 5.4(2)(b);
- (16) “Credit Spread(s)” means financing premium(s)/spread(s) in excess of the Interest Reference Rate as calculated/illustrated in the Financial Model in accordance with Form 3-4, Table A 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;
- (17) “Data Room” is defined in RFP Section 2.4(1);
- (18) “Evaluation Committee” is defined in RFP Section 6.1(1);
- (19) “Exempt Financial Institution” is defined in RFP Section 10.1(2);
- (20) “Existing Facility” is the facility, if any, listed as the Existing Facility in the RFP Data Sheet;
- (21) “Fairness Monitor” is defined in the RFP Data Sheet;
- (22) “Final Credit Spread Lock-in Date” is defined in RFP Section 5.4(4);
- (23) “Final Proposal Score” is defined in RFP Section 6.3.5(2);
- (24) “Final Submission Deadline” is defined in RFP Section 3.1(1);
- (25) “Financial Close” has the meaning given in the Project Agreement.
- (26) “Financial Model” is defined in RFP Section 4.1.4(2);
- (27) “Financial Services Provider” means any Lender (as that term is defined in the Project Agreement Documents) and any other provider of financial services or products;
- (28) “Financing Plan” is defined in RFP Section 4.1.4(2);
- (29) “Financing Timetable” is defined in RFP Section 9.2(2)
- (30) “FIPPA” is defined in RFP Section 3.8.1(1);

- (31) “First Credit Spread Lock-in Date” is defined in RFP Section 5.4(3);
- (32) “First Negotiations Proponent” is defined in RFP Section 8.1(1)(b);
- (33) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);
- (34) “Held Pricing Facilities” is defined in RFP Section 5.4(2)(b)(ii);
- (35) “Identified Proponent Parties” is defined in RFP Section 3.6(1);
- (36) “Indicative Credit Spread Benchmark(s)” is defined in Section 1(c) of Form 3-4 to Schedule 3 of the RFP;
- (37) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (38) “Ineligible Persons Affiliate” is defined in RFP Section 3.9.2(1);
- (39) “Initial Submission Deadline” is defined in RFP Section 3.1(1);
- (40) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (41) “Innovation Submission” is defined in Schedule 3 of the RFP;
- (42) “Interim Completion Payment” is defined in RFP Section 8.1(3);
- (43) “Invited Proponent” is defined in RFP Section 10.2(4);
- (44) “IOCIP” is defined in RFP Section 3.11.3(1);
- (45) “IPFP Framework” is defined in RFP Section 1.1(5);
- (46) “Lenders” mean the lenders providing the debt financing described in Part D of the Phase 2 Proposal Documents.
- (47) “Lenders Commitment Letter” is defined in RFP Section 5.4(5);
- (48) “Letter of Credit” is defined in RFP Section 9.1(2)
- (49) “M & E Sponsor Project” is defined in Section 3.12 of Schedule 1 of the RFP;
- (50) “Mechanical/Electrical Review Process” is defined in RFP Section 3.12(1);
- (51) “MEDEI” is defined in RFP Section 1.1(5);
- (52) “Ministry” is defined in the RFP Data Sheet;

- (53) “Negotiations Proponent” is defined in RFP Section 8.1(1)(b);
- (54) “OILC” is defined in RFP Section 1.1(1);
- (55) “Participating Lenders” is defined in RFP Section 5.6(2);
- (56) “Participating Proponent Team Members” is defined in RFP Section 5.6(2);
- (57) “Phase 1 Proposal Documents” means the documents listed in RFP Section 4.1.2(1)(a);
- (58) “Phase 2 Proposal Documents” means the documents listed in RFP Section 4.1.2(1)(b);
- (59) “Preferred Proponent” is defined in RFP Section 1.1(2);
- (60) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);
- (61) “Prequalification Submission” is defined in RFP Section 1.2(1);
- (62) “Prequalified Parties” is defined in RFP Section 1.2(1);
- (63) “Prequalified Subcontractors” is defined in RFP Section 1.2(3);
- (64) “Pre-Screened Mechanical and Electrical Subcontractors” is defined in RFP Section 3.12(3);
- (65) “Project” is defined in RFP Section 1.1(6);
- (66) “Project Agreement Documents” are those documents listed as the “Project Agreement Documents” in the RFP Data Sheet;
- (67) “Proponent” is defined in RFP Section 1.1(2);
- (68) “Proponents Meeting” is defined in RFP Section 3.4.1(1);
- (69) “Proponent Representative” is defined in RFP Section 1.2(2);
- (70) “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;
- (71) “Proposal” is defined in RFP Section 1.1(2);
- (72) “Proposal Information” is defined in RFP Section 3.8.4(5);

- (73) “Proposal Information License” is defined in RFP Section 3.8.4(4);
- (74) “Proposal Validity Period” is defined in RFP Section 5.4(1);
- (75) [Intentionally Deleted];
- (76) “Proposed Change in Identified Proponent Parties” is defined in RFP Section 3.6(3).
- (77) “Rectification Notice” is defined in RFP Section 5.4(6)(a);
- (78) “Rectification Notice Response” is defined in RFP Section 5.4(6)(a);
- (79) “Revised Bonding Submission” is defined in RFP Section 4.2(3);
- (80) “RFI” is defined in RFP Section 3.2.2(1);
- (81) “RFP Documents” is defined in RFP Section 2.1(1);
- (82) “RFP Process” is defined in RFP Section 1.1(3);
- (83) “RFQ” is defined in RFP Section 1.1(2);
- (84) “Scheduled Visits” is defined in RFP Section 3.5.1(1);
- (85) “Second Negotiations Proponent” is defined in RFP Section 8.1(1)(b);
- (86) “Signing Parties” is defined in RFP Section 1.1(7);
- (87) “sole discretion”, wherever used, means in the sole and absolute discretion of the party exercising the discretion;
- (88) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Clients;
- (89) “Surety’s Consent” is defined in RFP Section 4.2(1);
- (90) “Termination Notice” is defined in RFP Section 5.4(6)(b); and
- (91) “Timetable” is defined in RFP Section 3.1(1).