



**Request for Proposals
To Form an Alliance for the
Design and Construction of the
GO Expansion Union Station Enhancement Project**

RFP No. 19-190

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REQUEST FOR PROPOSALS

1 INTRODUCTION

1.1 General

- (1) This Request for Proposals (“**RFP**”) is issued by Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011* (“**Infrastructure Ontario**”, also known as “**OILC**” and “**IO**”) in conjunction with Metrolinx. Infrastructure Ontario and Metrolinx are collectively referred to as the “**Sponsors**” for the purposes of this RFP.
- (2) A brief description of the project that is the subject of this RFP (the “**Project**” or “**USEP**”) is set out in the RFP Data Sheet. A more detailed description of the scope of works relating to the Project is contained in RFP Schedule 4 – Scope of Works and in the documentation in the Data Room.

The Project forms part of the broader GO Expansion project (formerly Regional Express Rail). The Project will deliver substantial enabling works necessary to build capacity prior to the completion of the GO Expansion On-Corridor Works Project (“**OnCorr**”). These works include new platforms, concourse connectivity and associated infrastructure to incrementally improve service and customer satisfaction. OnCorr is the largest package of the GO Expansion project and USEP will therefore be an essential enabler for further station improvement and rail corridor work as part of the GO Expansion project.

The GO Expansion project recognizes the present and future growth in population in the greater Toronto and Hamilton area. Growth expansion models indicate the population reaching 12 million by 2041 from 8.8 million in 2018. In Q4 2018, GO ridership averaged 210,000 trips daily, of which approximately 90% of trips started or finished at Union Station. Total ridership is planned to increase to 540,000 trips daily after upgrades to the rail corridors and Union Station.

At a programme level, GO Expansion comprises several workstreams, one of which is upgrading Union Station. This station is at the heart of the GO network, which currently operates 40 train through Union Station in the morning peak. On programme completion, capacity will be enhanced to enable a minimum of 66 trains per hour with significant additional capacity available for future growth. Customer experience will be greatly enhanced by improved facilities, wider platform with improved vertical circulation (stairs and elevators) and connectivity, improved safety and pedestrian flow, and faster commutes. USEP is the next big step in achieving these aspirations.

The Sponsors have decided to apply the alliance contracting model to the Project. Alliance contracting delivers major capital assets by allowing a public sector agency to work collaboratively with private sector parties. All Alliance participants are required to work together in good faith, acting with integrity and making best-for-project decisions. Working as an integrated, collaborative team, Alliance participants will make unanimous decisions on all key project delivery issues. The Alliance structure capitalizes on the relationships between the Alliance participants, removes organizational barriers and encourages effective integration with

the Owner. It is expected that the Alliance model will be able to address the following objectives for this Project:

- Enhance safety within a constrained operating and construction environment;
 - Ensure collaboration in design and scope changes, given the potential of risks of redeveloping Union Station while at the same time protecting ongoing rail and station operations;
 - Reduce risks related to property access and acquisition;
 - Improve construction-related track access and interfaces with other adjacent projects within the Union Station rail corridor, minimizing delays as much as possible;
 - Effectively managing stakeholder relationships, both internal to the Alliance (such as Metrolinx rail and station operations) and external (such as the City of Toronto and its agencies, Parks Canada, third party contractors, etc.)
 - Allowing for enhanced opportunities for innovation, sustainability, efficiency, and quality management.
- (3) In this RFP, Prequalified Parties that participate in the RFP Process (including, for clarity, during the RFP Phase and the AD Phase) are referred to as “**Proponents**” and proposal submissions submitted by Prequalified Parties during the RFP Phase, as may be revised by RFP Section 5.3, if applicable, are referred to as “**RFP Proposals**”. In this RFP, the Proponent that enters into an Alliance Development Agreement with the Sponsors, after being shortlisted by the Sponsors during the RFP Phase, is referred to as a “**Shortlisted Proponent**”, and the proposal submission submitted during the AD Phase by a Shortlisted Proponent, as may be revised by RFP Section 5.3, if applicable, is referred to as a “**Project Proposal**”. The Proponent that is selected to enter into the Project Alliance Agreement with the Signing Parties is referred to as the “**Successful Proponent**”. For the purposes of convenience, in this RFP the expression “Proponents” also includes: (i) Prequalified Parties prior to the submission of their RFP Proposals and (ii) a Shortlisted Proponent prior to the execution of a Project Alliance Agreement with the Signing Parties. For clarity, only a Shortlisted Proponent will enter into an Alliance Development Agreement with the Sponsors and submit a Project Proposal for consideration by the Sponsors, and a Shortlisted Proponent will be required to execute an Alliance Development Agreement prior to proceeding to the AD Phase.
- (4) Except as provided in RFP Section 1.1(4)(a), the procurement process to select a Successful Proponent shall commence with the issuance of this RFP and shall terminate on the PAA Effective Date or on the expiration of the Project Proposal Validity Period (or extended Project Proposal Validity Period, if applicable) whichever is first (the “**RFP Process**”). Except as provided in RFP Sections 3.8.2 and 3.8.3 and except for the Project Sponsors’ obligation to pay a Proposal Fee, all rights and obligations arising out of the RFP terminate either on the cancellation of this RFP Process by the Sponsors, if such cancellation occurs, or,
- (a) for the Proponents that are not a Shortlisted Proponent, on the expiration of the RFP Proposal Validity Period (or the extended RFP Proposal Validity Period, if applicable) or PAA Effective Date, whichever occurs first;

- (b) for the Successful Proponent, on the earlier to occur of: (i) the PAA Effective Date and (ii) the Project Proposal Validity Period, or extended Project Proposal Validity Period, if applicable.
- (5) 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, except as otherwise directed in writing by the Sponsors, Proponents shall contact Infrastructure Ontario only through the Contact Person as set out in RFP Section 3.2.1.
- (6) The Project to which this RFP applies has been approved by the Ministry of Infrastructure (“**MOI**”) to proceed as an alliance contracting procurement project. The Project shall follow five fundamental principles for the procurement of public infrastructure, which include:
- (a) the public interest is paramount;
 - (b) value for the investment of public money must be demonstrated;
 - (c) appropriate public control and sponsorship must be maintained;
 - (d) accountability must be maintained; and
 - (e) fair, transparent and efficient processes must be used.
- (7) Under the Alliance, the Owner will collaborate with the Non-Owner Participants to deliver the Project and share the risks and rewards associated with delivering the Project. A commercial and legal framework will be developed and included in the Project Alliance Agreement which seeks to align the commercial interests of all Participants. The Sponsors’ expectation is that the collective responsibilities of the Participants, the sharing of Project risks and the transparency and behavioural commitments gained through this arrangement will facilitate the achievement of the Sponsors’ objectives. The Alliance culture will be characterized by the following principles:
- (a) good faith;
 - (b) “best for project” decision making based on an approach, determination, decision, method, solution, interpretation, outcome or resolution that is consistent with the Owner’s value for money statement (VFM Statement) and the Alliance Charter;
 - (c) a commitment to no disputes;
 - (d) a “no fault-no blame” culture;
 - (e) transparency through open book documentation and reporting; and
 - (f) a joint management structure where responsibility is shared between the Participants.

The structure of the Alliance will be more fully described in the Project Alliance Agreement, the Governance Plan and the Responsibilities Matrix, and will include an Alliance Leadership Team, Alliance Management Team, Alliance Project Team and Alliance Director.

- (8) The proposed Commercial Framework for the Project is set out in RFP Schedule 5 – Commercial Framework.
- (9) The Proponent Team Members of the Shortlisted Proponent, subject to the requirements and conditions of the RFP Documents, will enter into the Alliance Development Agreement with the party or parties named by the Sponsors as the signing party or parties in the RFP Data Sheet (the “**Signing Parties**”). The Proponent Team Members of the Successful Proponent that are to become Non-Owner Participants, subject to the requirements and conditions of the RFP Documents, including for clarity the Alliance Development Agreement and the Project Alliance Agreement, will enter into the Project Alliance Agreement with the Signing Parties. Unless listed as Signing Parties to the Alliance Development Agreement and Project Alliance Agreement in the RFP Data Sheet, neither Infrastructure Ontario, nor the Government of Ontario will be parties to the Alliance Development Agreement or the Project Alliance Agreement.

1.2 Prequalified Parties and Proponent Representatives

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

1.3 Overview of the Stages of Project Procurement and Implementation

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

- (a) Stage 1 – Prequalification Stage

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

- (b) Stage 2 – RFP Process

The RFP Process is the competitive procurement process described in detail in this RFP. The RFP Process begins with the issuance of the RFP to the Prequalified Parties and ends on the earlier of:
(i) the date of execution of the Project Alliance Agreement by the Signing Parties and the

Successful Proponent; or (ii) the date of termination of the RFP by the Sponsors. The RFP Process is comprised of the RFP phase described in Section 1.3(1)(b)(i) (the “**RFP Phase**”), and the Alliance development phase described in Section 1.3(1)(b)(ii) (the “**AD Phase**”):

- (i) The RFP Phase is the first phase of the RFP Process and is intended to result in the identification of the Shortlisted Proponent. The Proponent Team Members of the Shortlisted Proponent who are to become Non-Owner Participants in the Alliance will execute an Alliance Development Agreement with the Signing Parties and advance to the AD Phase of the RFP Process.
- (ii) The AD Phase is the second phase of the RFP Process that immediately follows the RFP Phase and is intended to result in the identification of the Successful Proponent, whose Proponent Team Members will sign the Project Alliance Agreement with the Signing Parties. The purpose of the AD Phase is to enable:
 - (A) the Sponsors to work collaboratively with the Shortlisted Proponent in the development of a Project Proposal, including, among other things, to (i) develop a full Target Outturn Cost; (ii) develop a Project design to a level of detail necessary to enable the Shortlisted Proponent to submit a full Target Outturn Cost as part of its Project Proposal; (iii) undertake a risk and opportunity analysis to develop an agreed Risk or Reward Regime; (iv) finalize the Commercial Framework; and (v) provide the Sponsors with any information required to assist the Sponsors to select the Successful Proponent;
 - (B) the Shortlisted Proponent to show how, if it is the Successful Proponent, it will participate in the Alliance with the Sponsors to perform the Works (as defined in the Project Alliance Agreement);
 - (C) the Financial Establishment Audit;
 - (D) the delivery of certain Early Works by the Shortlisted Proponent in advance of the execution of the Project Alliance Agreement; and
 - (E) any other activities set out in Section 2.1 of the Draft Alliance Development Agreement.

Based on the Project Proposal and the Sponsors’ interactive discussions with the Shortlisted Proponent during the AD Phase, the Sponsors may select the Shortlisted Proponent as the Successful Proponent.

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

Once the Signing Parties and the Proponent Team Members of the Successful Proponent that are to become Non-Owner Participants have executed the Project Alliance Agreement, the terms and conditions of the Project Alliance Agreement shall determine how the Project is to proceed.

1.4 Signatories to Alliance Development Agreement and Project Alliance Agreement

- (1) At least one (1) Construction Prime Team Member and one (1) Design Prime Team Member are to be Non-Owner Participants.
- (2) Each Proponent Team Member of the Shortlisted Proponent that is proposed to become a Non-Owner Participant will be required to sign the Alliance Development Agreement on its own behalf, and each Proponent Team Member of the Successful Proponent that is proposed to become a Non-Owner Participant will be required to sign the Project Alliance Agreement on its own behalf.

1.5 Early Works

- (1) The Shortlisted Proponent may be engaged to perform certain early works in respect of the Project during the AD Phase. Further details in respect of this early works program and the payment terms in respect of the performance of such early works during the AD Phase are set out in the Alliance Development Agreement.

1.6 Fairness Monitor

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

2 THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

- (1) The RFP documents (the “**RFP Documents**”) are:
 - (a) this RFP;
 - (b) Schedule 1 – RFP Data Sheet;
 - (c) Schedule 2 – Consultation and Interview Process;
 - (d) Schedule 3 – RFP Proposal Submission Requirements;
 - (i) Part 1 – RFP Proposal Submission Requirements;
 - (ii) Part 2 – RFP Proposal Format, Evaluation and Selection Criteria;
 - (e) Schedule 4 – Scope of Works;
 - (f) Schedule 5 – Commercial Framework;
 - (g) Schedule 6 – Proposal Submission Form;
 - (h) Schedule 7 – RFP Proposal Conflict Screening List;
 - (i) Schedule 8 – Proponent Team Member Declaration;

- (j) Schedule 9 – Certificate of Officer;
 - (k) Schedule 10 – Form of Alliance Development Agreement;
 - (l) Schedule 11 – Form of Project Alliance Agreement; and
 - (m) Addenda to the RFP Documents, if any.
- (2) Subject to RFP Section 2.2(1), the RFP Documents shall be read as a whole. The Schedules and Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. For greater clarity, Background Information documents are not RFP Documents.

2.2 Conflicts or Inconsistencies in Documents

- (1) For the purpose of the RFP Process, if there are any conflicts or inconsistencies among the terms and conditions of the documents comprising RFP Documents the following shall apply:
- (a) in respect of matters of interpretation related to the RFP Process and all competitive procurement process matters, this RFP shall prevail over the Schedules to this RFP during the RFP Process;
 - (b) in respect of all matters of interpretation of the Project, the Alliance Development Agreement and the Project Alliance Agreement during the RFP Process, the Alliance Development Agreement and Project Alliance Agreement shall prevail over this RFP and all other Schedules to this RFP; and
 - (c) for the purpose of resolving conflicts or inconsistencies among each of the documents that constitute either the Alliance Development Agreement or the Project Alliance Agreement, the provisions of the Alliance Development Agreement or the Project Alliance Agreement, respectively, 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 a RFP Document as contained in the Data Room; and
 - (b) any other version of the same RFP Document (whether in electronic or hard copy),
- the Sponsors' electronic version as contained in the Data Room shall govern.
- (4) If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are downloaded by the Proponent, the documents contained in the Data Room shall govern.

- (5) If there is any conflict or inconsistency between two versions of the same RFP Document contained in the Data Room, the RFP Document of the later date or version number shall prevail over the same RFP Document of an earlier date or version number. Unless otherwise indicated, for the purposes of this RFP Section 2.2(5), the date of each RFP Document shall be determined by the date and time when that document was placed in the Data Room by Infrastructure Ontario.

2.3 Distribution of Documents to Proponents

- (1) Except as provided in RFP Sections 2.3(2) and 2.3(3), the Sponsors 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 RFP Proposals and Project Proposals, as applicable.
- (2) Subject to Section 2.3(3), the Sponsors may circulate some RFP Documents in paper copy. If the Sponsors circulate any RFP Documents in paper copy, Proponents will be notified of a paper copy circulation by way of a notice in the Data Room.
- (3) A Proponent that has been notified by the Sponsors that it has not been selected as a Shortlisted Proponent will not receive subsequent circulations of RFP Documents and Addenda related to or in respect of the Sponsors' interactive discussion with the Shortlisted Proponent during the AD Phase after such notification, nor will such Proponent receive notifications that documents have been added to 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 "blacklined" RFP Documents revised by Addenda);
 - (b) the provision of various types of background information for the Proponents' review ("**Background Information**"); and
 - (c) the receipt of RFIs from Proponents and the posting of responses to RFIs.
- (2) The Data Room will be accessible on approximately the date set out in the Timetable. The Sponsors may add, delete or amend documents in the Data Room at any time.
- (3) Each Proponent is solely responsible to ensure that it:
- (a) contacts the Contact Person at the coordinates set out in the RFP Data Sheet to arrange access to the Data Room and receipt of a Data Room password;

- (b) has the appropriate software which allows the Proponent to access and download RFP Documents and Background Information from the Data Room; and
- (c) checks the Data Room frequently for the addition, deletion or amendment of RFP Documents, Background Information and the posting of responses to RFIs and, at all times during the RFP Process keeps itself informed of and takes into account the most current RFP Documents, Background Information and responses to RFIs.

2.5 Proponent Investigations

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

3 THE RFP PROCESS

3.1 RFP Process Timetable

- (1) The deadline for the submission of the RFP Proposal Technical Submission and the RFP Proposal Commercial Submission (the "**RFP Proposal Submission Deadline**"), the deadline for the submission of the Project Proposal (the "**Project Proposal Submission Deadline**") and the general timetable for the RFP Process (the "**Timetable**") are set out in the RFP Data Sheet.
- (2) The Sponsors may amend the Timetable in their sole discretion:

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

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

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

3.2.2 Clarification/RFI Submission Process

- (1) In addition to the requirement set out in RFP Section 3.2.1, the following rules shall apply to Proponents when submitting questions or requests for information (“**RFIs**”) to the Sponsors during the RFP Phase:
 - (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) During the RFP Phase, Proponents shall submit RFIs in accordance with the deadlines set out in the Timetable.
- (4) During the RFP Phase, Proponents shall submit all RFIs to the Contact Person electronically in accordance with the instructions set out in the RFP Data Sheet.
- (5) The Sponsors will respond to RFIs in written responses circulated to Proponents in accordance with the schedule set out in the Timetable. The Sponsors may, in their sole discretion, distribute responses to RFIs of a minor or administrative nature to only the Proponent who submitted the minor or administrative RFI.
- (6) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with RFP Section 3.2.2 and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. Neither the Sponsors nor the Government of Ontario are responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by the Sponsors or the Government of Ontario.

3.3 Communications Restrictions

3.3.1 Communications with Municipalities, Other Government Authorities and Utilities

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

3.3.2 Prohibited Contacts and Lobbying Prohibition

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

- (2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, the RFP Proposals or the Project Proposals:
- (a) any member of the Evaluation Committee;
 - (b) any Advisor to the Sponsors or the Evaluation Committee;
 - (c) any employee or representative of:
 - (i) the Sponsors;
 - (ii) MOI, the Ministry of Transportation or any other ministry, agency or entity listed in the RFP Data Sheet;
 - (iii) the Premier of Ontario’s office or the Ontario Cabinet office;
 - (d) any member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
 - (e) any directors, officers or consultants of any entity listed in RFP Sections 3.3.2(2)(a) to 3.3.2(2)(d).
- (collectively, the “**Prohibited Contacts**”)
- (3) Notwithstanding RFP Section 3.3.2(2), during the AD Phase, the Sponsors may provide additional directions regarding contact by the Shortlisted Proponent with the Prohibited Contacts, including permitting contact by the Shortlisted Proponent and certain Prohibited Contacts.
- (4) 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 RFP Section 3.3.2(2), the Sponsors may, in their sole discretion,
- (a) take any action in accordance with RFP Section 7.1.2; or
 - (b) impose conditions on the Proponent’s or Proponent Team Member’s continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

For clarity, the Sponsors are not obliged to take the actions set out in RFP Section 3.3.2(4)(a) or RFP Section 3.3.2(4)(b).

3.3.3 Media Releases, Public Disclosures and Public Announcements

- (1) A Proponent shall not, and shall ensure that its Advisors, employees, representatives and Proponent Team Members, and their respective Advisors, employees and representatives do not, issue or disseminate any media release, public announcement or public disclosure (whether for

publication in the press, on the radio, television, internet or any other medium) that relates to the RFP Process, the RFP Documents or the Project or any matters related thereto, without the prior written consent of the Sponsors.

- (2) Neither the Proponents or the Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent, RFP Proposal or Project Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsors' prior written consent, which consent may be withheld in the Sponsors' sole discretion. Notwithstanding this RFP Section 3.3.3(2), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.
- (3) For the purpose of greater clarity, RFP Section 3.3.3(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Project with prospective subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.

3.3.4 Restrictions on Communications between Proponents – No Collusion

- (1) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own RFP Proposal or the RFP Proposal of the other Proponent in a fashion that would contravene Applicable Law. Proponents shall prepare and submit RFP Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.
- (2) For greater clarity, RFP Section 3.3.4(1) applies to Proponents and Proponent Team Members and their respective Advisors, employees and representatives.

3.4 Meetings with Proponents

3.4.1 General Proponents Meeting(s)

- (1) The Sponsors may, in their sole discretion, convene general Proponents meetings (each, a **"Proponents Meeting"**) on the dates and at the times set out in the Timetable and at the location and for the purposes set out in the RFP Data Sheet. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Proponents Meeting is at the Proponent's sole risk and responsibility.
- (2) The Sponsors shall communicate locations and particulars with respect to Proponents Meetings to the Proponents in advance. All meetings shall be held in the Greater Toronto Area, Ontario. The Sponsors reserve the rights, in their sole discretion, to limit the number of Proponent attendees that may attend any Proponents Meeting. The Sponsors shall notify the Proponents in advance in the event any such limitation is to be imposed.
- (3) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the Sponsors may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2.2 for response in accordance with RFP Section 3.2.2.

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

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 proposed Alliance, the Commercial Framework and the RFP Documents; and
 - (b) other matters that may arise during the RFP Process.
- (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. While attendance at Commercially Confidential Meetings is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Commercially Confidential Meeting is at the Proponent’s sole risk and responsibility.
- (3) If the Sponsors hold Commercially Confidential Meetings, the Fairness Monitor may be present during some or all of those meetings.
- (4) No statement, consent, waiver, acceptance, approval or anything else said or done in any of these Commercially Confidential Meetings by the Sponsors or any of their respective Advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7.
- (5) The Proponent, its Proponent Team Members and their respective Advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:
- (a) any statement made at a Commercially Confidential Meeting by the Sponsors or any of their Advisors or representatives is not and shall not be deemed or considered to be an indication of a preference by the Sponsors or the Government of Ontario or a rejection by the Sponsors or the Government of Ontario of anything said or done by the Proponent, Proponent Team Member or any of their respective Advisors or representatives;
 - (b) any statement made at a Commercially Confidential Meeting by the Sponsors or any of their Advisors or representatives shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the

Alliance Development Agreement, the Project Alliance Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7 provided that the Sponsors shall not be under any obligation to confirm any information by Addendum;

- (c) the Sponsors may share process-related information, including clarifying information, with all Proponents if the need arises; and
- (d) the Proponent, its Proponent Team Members and their respective Advisors and representatives:
 - (i) shall participate in the Commercially Confidential Meetings in accordance with the guidelines, procedures and processes set out in the RFP;
 - (ii) waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent, another Proponent’s Proponent Team Member, or their respective Advisors or representatives that was not received by the Proponent, its own Proponent Team Member(s) or any of their respective Advisors or representatives; and
 - (iii) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

3.4.3 Collaborative and Behavioural Assessment

- (1) During the RFP Phase and on the dates and at the times set out in the Timetable, the Sponsors will undertake two rounds of behavioural assessments (collectively, the “**Collaborative and Behavioural Assessments**”) to assess each Proponent’s understanding and commitment to collaborative working and the behaviours to demonstrate that understanding and commitment.
- (2) The first round of Collaborative and Behavioural Assessments (the “**First Round Collaborative and Behavioural Assessments**”) will take place prior to the submission of the RFP Proposals with each Proponent and will comprise of an interactive collaborative and behavioural assessment workshop.
- (3) The second round of Collaborative and Behavioural Assessments (the “**Second Round Collaborative and Behavioural Assessments**”) will take place following the submission of the RFP Proposals with up to two (2) of the highest ranked Proponents based upon the preliminary scores from the RFP Proposals, as determined in accordance with RFP Section 6.5.7. The Second Round Collaborative and Behavioural Assessments will comprise of an interactive, collaborative and behavioural assessment workshop and an interview with board level management of Proponent Team Members.
- (4) Further details regarding the Collaborative and Behavioural Assessments are set out in RFP Schedule 2 – Consultation and Interview Process.

- (5) Scoring of the Collaborative and Behavioural Assessment will be conducted in accordance with Part 2 to RFP Schedule 3 – RFP Proposal Format, Evaluation and Selection Criteria.
- (6) The Collaborative and Behavioural Assessments will be independently facilitated and managed by a collaborative and behavioural consultant. The Fairness Monitor may attend the workshops and interviews comprising the Collaborative and Behavioural Assessments.

3.5 Visiting the Lands

3.5.1 Scheduled Visits

- (1) If, in the RFP Data Sheet, the Sponsors have established scheduled dates and rules for visits to see the Lands (“**Scheduled Visits**”) for all Proponents, Proponent Team Members and their respective representatives and Advisors, the dates and rules of the Scheduled Visits will be set out in the Timetable and the RFP Data Sheet. A Metrolinx representative shall be present at all Scheduled Visits.
- (2) The following shall apply to Scheduled Visits:
 - (a) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the Sponsors’ representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
 - (b) all Proponent and Proponent Team Member representatives shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying, residing or working in close proximity to any part of the Lands which are not accessible by the general public, as applicable;
 - (c) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the Lands which are not accessible by the general public, as applicable, to which the Proponent has been granted access in the Contact Person’s confirmation;
 - (d) the Proponent and Proponent Team Member representatives shall not take photographs without the prior written consent of the Contact Person. If photographs are permitted by the Contact Person, they may be taken by the Proponent and Proponent Team Member representatives only in the specific areas of the Lands which are not accessible by the general public, for which consent to photograph has been given; and
 - (e) the Proponent shall comply with any supplementary rules set out in the RFP Data Sheet for Scheduled Visits.
- (3) Any statement made by the Sponsors or any of their respective Advisors or representatives during any Scheduled Visit or any additional or other visit to the Lands, if any, shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Alliance Development Agreement, the Project Alliance Agreement, the Project or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7 provided that neither Infrastructure Ontario nor Metrolinx shall be under any obligation to confirm any information by Addendum.

- (4) Except for Scheduled Visits, Proponents are not permitted to access,
 - (a) the USRC under any circumstances; or
 - (b) any other part of the Lands or Existing Infrastructure which is not accessible by the general public,except, in each case, by prior written arrangement with the Contact Person.
- (5) For the purpose of this RFP Section 3.5.1 and the RFP Data Sheet, rail platforms are not and are not construed to be areas which are accessible to the general public.

3.5.2 Public Area Visits

- (1) Proponents, Proponent Team Members and all of their respective Advisors, employees and representatives are prohibited from visiting the Lands (or portion thereof) which are accessible to the general public (other than during Scheduled Visits, where the provisions of RFP Section 3.5.1 shall apply) for the purpose of conducting investigations or work relating to the Project or this RFP.

3.6 Changes to Identified Proponent Parties

- (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, those individuals identified in the Proponent's Prequalification Submission as key personnel, Key Individuals, or other parties identified in the Proponent's Prequalification Submission (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors.
- (2) Without limiting the generality of the foregoing, Proponents are permitted to request a change in their Identified Proponent Parties in accordance with this RFP Section 3.6.
- (3) No later than the deadline set out in the Timetable, a Proponent may request a change in its Identified Proponent Parties, including any proposed withdrawal from, addition to, or substitution of the Identified Proponent Parties (each, a "**Proposed Change in Identified Proponent Party**") by delivering a request notice to the Contact Person, requesting the Sponsors' consent to such Proposed Change in Identified Proponent Party.
- (4) If an Identified Proponent Party withdraws from the RFP Process in a manner that does not make it possible for the Proponent to deliver the request notice in advance of obtaining the Sponsors' prior consent, the Proponent shall notify the Sponsors of the withdrawal as soon as the Proponent becomes aware of the withdrawal and shall deliver a further request notice to the Contact Person, requesting the Sponsors' consent to a Proposed Change in Identified Proponent Party, either by substituting, or by proceeding without any substitute of the withdrawn Identified Proponent Party, such request notice to be delivered no later than six weeks after the occurrence of the date of withdrawal or 21 days before the RFP Proposal Submission Deadline, whichever is earlier.
- (5) A request notice delivered under either RFP Section 3.6(3) or RFP Section 3.6(4), as applicable, shall:

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

- (a) an actual change in any Identified Proponent Party is made at any time during the RFP Process by the Proponent without obtaining prior consent of the Sponsors (including any withdrawal of an Identified Proponent Party described in RFP Section 3.6(4));
 - (b) a request for a change in any Identified Proponent Party is made after the deadlines set out in RFP Section 3.6(3) or RFP Section 3.6(4), as applicable; or
 - (c) a change in circumstances with respect to a Proponent after the RFP Proposal Submission Deadline that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent’s or the Identified Proponent Party’s ability to perform their respective obligations under the Alliance Development Agreement and the Project Alliance Agreement.
- (9) If, at any time prior to the PAA Effective Date, and notwithstanding any other provision in this RFP, there is a Change in Control of a Proponent or of one of its Proponent Team Members (the “**Acquiree**”) by one of the other Proponents or one of the other Proponent’s Proponent Team Members (the “**Acquirer**”):
- (a) the Acquiree shall be immediately disqualified from further participation in this RFP Process. In the event that a Proponent Team Member is the Acquiree, the affected Proponent may request a change of the Acquiree and the Sponsors shall consider such request, in their sole discretion, in accordance with this RFP Section 3.6. In the event that such request to change the Proponent Team Member is rejected by the Sponsors, the Sponsors shall disqualify the Proponent from continuing in the RFP Process; and
 - (b) the Sponsors may, in their sole discretion, allow the Acquirer to continue in the RFP Process, however, the Sponsors’ consent to continue may be subject to such terms and conditions as the Sponsors may require.
- (10) If, after identification of the Shortlisted Proponent, the Sponsors determine, acting reasonably, that it is in the best interests of the Sponsors that any individual proposed as a Key Individual in the RFP Proposal be substituted, the Sponsors shall notify the Shortlisted Proponent (including a detailed explanation of the reasons for such determination), and, within ten (10) days following receipt by the Shortlisted Proponent of such notice, the Shortlisted Proponent shall provide the Sponsors with relevant information on the proposed substitution and shall consult with the Sponsors before finalizing the appointment of such substitution. The proposed substitution must have equal or better qualifications than the qualifications of the Key Individual that they are replacing.

3.7 Addenda/Changes to the RFP Documents

- (1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Project Proposal Submission Deadline. Subject to RFP Section 2.3(3), the Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors or the Sponsors’ Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The 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 Proponent Representatives by e-mail that an Addendum has been placed in the Data Room.
- (4) Any reference to any one or all of the RFP Documents in the RFP Documents includes any amendments to the RFP Documents made in accordance with this RFP Section 3.7.

3.8 Freedom of Information, Confidentiality and Copyright Matters

3.8.1 Freedom of Information and Protection of Privacy Acts

- (1) Proponents are advised that the Sponsors may be required to disclose the RFP Documents, a part or parts of any RFP Proposal, and a part or parts of any Project Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time (“**FIPPA**”); and
- (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 RFP Proposals and Project Proposals.
- (3) Subject to the provisions of FIPPA, the Sponsors will use reasonable commercial efforts to safeguard the confidentiality of any information identified by the Proponent as confidential but shall not be liable in any way whatsoever to any Proponent or Proponent Team Member if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under Applicable Law.

3.8.2 Confidentiality Agreements

- (1) Each Prequalified Party has executed a submission form to the RFQ that states that they agree to be bound by the confidentiality provisions set out in the RFQ. If the Sponsors, in their sole discretion, require a separate confidentiality agreement from Proponents, no later than five (5) days after a request by the Sponsors, the Proponent shall cause each of its employees, representatives and Advisors and its Proponent Team Members and each of their employees, representatives and Advisors who are in receipt of Confidential Information, to execute and deliver to the Sponsors a confidentiality agreement in a form prescribed by and with terms and conditions acceptable to the Sponsors, in their sole discretion. To the extent that the provisions of the confidentiality agreements are inconsistent or conflict with the requirements of RFP Section 3.8.3, the more stringent confidentiality obligation shall govern.

3.8.3 Confidential Information

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

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

- (2) The Proponent agrees that all Confidential Information:
- (a) shall remain the sole property of the Sponsors or the Government of Ontario, as applicable, and the Proponent shall treat it as confidential;
 - (b) shall not be used by the Proponent for any purpose other than developing and submitting an RFP Proposal and Project 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 RFP Proposal and, if applicable, its Project 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, all Confidential Information shall be returned by the Proponents to the Sponsors no later than ten (10) calendar days after that request.
- (3) Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8.3 by any person to whom it discloses the Confidential Information including, for greater clarity, the Proponent's employees, representatives and Advisors and the Proponent Team Members and their employees, representatives and Advisors. Each Proponent shall indemnify each of the Sponsors and the Government of Ontario and each of their related entities and each of their respective directors, officers, consultants, employees, agents and representatives and save each of them fully harmless from and against any and all loss, cost, damage, expense, fine, suit, claim, penalty, demand, action, obligation and liability of any kind or nature (including, without limitation, professional fees on a full indemnity basis) suffered or incurred by any of them arising as a result of or in connection with any breach of any of the provisions of this RFP Section 3.8.3 by the Proponent or by any person to whom the Proponent has disclosed the Confidential Information. Each Proponent agrees that the Sponsors act as trustee for each of their related entities and the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives with respect to all rights contemplated hereunder arising in favour of a related entity or the Government of Ontario or any of their respective directors, officers, consultants, employees, agents or representatives and that the Sponsors have agreed to accept such trust and hold and enforce such rights on behalf of each related entity or the Government of Ontario and each of their respective directors, officers, consultants, employees, agents and representatives.
- (4) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8.3 would cause the Sponsors, the Government of Ontario and their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors, the Government of Ontario and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8.3 upon application to a court of competent

jurisdiction without proof of actual damage to the Sponsors, the Government of Ontario or any of their related entities.

- (5) Notwithstanding anything else to the contrary in this RFP, the provisions of this RFP Section 3.8.3 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 RFP Proposal or a Project Proposal.
- (6) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:
 - (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent’s confidentiality obligations or by any act or fault of the Proponent;
 - (b) information which was in the Proponent’s possession prior to its disclosure to the Proponent by the Sponsors, and provided that it was not acquired by the Proponent under an obligation of confidence; or
 - (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

3.8.4 Copyright and Use of Information in Proposals

- (1) Proponents shall not use or incorporate into their RFP Proposals any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have, or will procure through licencing without cost to the Sponsors, the right to use and employ such concepts, products and processes in and for the Project.
- (2) All requirements, designs, documents, plans and information supplied by the Sponsors to the Proponents in connection with this RFP are and shall remain the property of the Sponsors. Upon request of the Sponsors, all such designs, documents, plans and information (and any copies thereof in any format or medium created by or on behalf of the Proponent) must be returned to the Sponsors.
- (3) The Proponent and each Proponent Team Member, by their participation in the RFP Process, hereby grant to each of, the Sponsors and Her Majesty the Queen in Right of Ontario a non-exclusive, perpetual, irrevocable, world-wide, fully paid and royalty free licence (fully assignable without the consent of the Proponent and with the right to sub-licence without the consent of the Proponent) to use the RFP Proposal Information (the “**RFP Proposal Information Licence**”). Without limiting the foregoing, the RFP Proposal Information Licence shall include the right to modify the RFP Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except Participants (as defined in the Alliance Development Agreement and Project Alliance Agreement) in relation to this Project, be liable to the Sponsors, Her Majesty the Queen in Right of Ontario or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising

directly or indirectly from the use of the RFP Proposal Information pursuant to the RFP Proposal Information Licence.

- (4) For the purpose of this RFP Section 3.8.4, “**RFP Proposal Information**” includes:
- (a) all information contained in a RFP Proposal or which is disclosed by or through a Proponent to the Sponsors during the evaluation of the Proponent’s RFP Proposal; and
 - (b) any and all ideas, concepts, products, alternatives, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any RFP Proposal.
- (5) Proponents shall ensure that all intellectual property rights associated with any and all of the RFP Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give Infrastructure Ontario, Metrolinx and Her Majesty the Queen in Right of Ontario the rights set out in this RFP Section 3.8.4. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of Infrastructure Ontario, Metrolinx or Her Majesty the Queen in Right of Ontario to use any of the RFP Proposal Information, or anything else obtained by or through Proponents, shall be absolutely null and void and unenforceable as against Infrastructure Ontario, Metrolinx, Her Majesty the Queen in Right of Ontario and each of their respective Advisors, and that the provisions of this RFP Section 3.8.4 shall take precedence and govern.
- (6) The Sponsors’ rights to the Project Proposal and information developed and submitted by the Participants to the Sponsors during the AD Phase are addressed in the Alliance Development Agreement.

3.8.5 Open Data Directive

- (1) Proponents acknowledge that the RFP Documents and a part or parts of any RFP Proposal and any Project Proposal are subject to the Open Data Directive and that the Ontario ministries and agencies are required to disclose or publish certain data in accordance with the Open Data Directive.

3.9 Conflict of Interest and Ineligible Persons

3.9.1 Conflict of Interest

- (1) Proponents and Proponent Team Members and each of their Advisors, shall disclose, in their Proposal Submission Form and the Proponent Team Member Declaration (in respect of Proponent Team Members), all perceived, potential and actual Conflicts of Interest. For clarity, Proponents have an ongoing obligation to comply with this RFP Section 3.9.1.
- (2) If a Proponent, a Proponent Team Member or any of their respective Advisors, prior to or following submission of its RFP Proposal and its Project Proposal (if applicable), discovers any perceived, potential or actual Conflicts of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.

- (3) At the request of the Sponsors, the Proponent shall provide the Sponsors with the Proponent’s proposed means to mitigate and minimize to the greatest extent practicable any perceived, potential or actual Conflict of Interest. The Proponent shall submit any additional information to the Sponsors that the Sponsors consider necessary to properly assess the perceived, potential or actual Conflict of Interest.
- (4) The Sponsors may, in their sole discretion, exclude any Proponent Team Member or Proponent Advisor on the grounds of Conflict of Interest.
- (5) Without limiting the generality of RFP Sections 3.9.1(4) or 3.9.1(6), the Sponsors may, in their sole discretion, require the Proponent, Proponent Team Member or a Proponent’s Advisor to substitute a new person or entity for the person or entity giving rise to the Conflict of Interest.
- (6) The Sponsors may, in their sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of Proponents or Proponent Team Members, or any of their respective Advisors. A waiver may be upon such terms and conditions as the Sponsors, in their sole discretion, require to satisfy themselves that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring the Proponent to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to the Sponsors, in their sole discretion, to manage, mitigate and minimize the impact of such Conflict of Interest.
- (7) For the purposes of this RFP Process “**Conflict of Interest**” includes any situation or circumstance where a Proponent, any Proponent Team Member, any Proponent Advisor or any of the employees of a Proponent, Proponent Team Member or Proponent Advisor engaged in the development or oversight of development of the RFP Proposal or the Project Proposal (including for such employees in their personal capacities):
 - (a) has commitments, relationships or financial interests or involvement in any litigation or proceeding that:
 - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsors or their Advisors;
 - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the Alliance Development Agreement if that Proponent was determined to be the Shortlisted Proponent under the RFP Process; or
 - (iii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent’s obligations under the Project Alliance Agreement if that Proponent was determined to be the Successful Proponent under the RFP Process;
 - (b) has contractual or other obligations to Infrastructure Ontario or Metrolinx that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process or the Project; or

- (c) has knowledge of confidential information (other than Confidential Information) that,
 - (i) has been made available to the Proponent, any Proponent Team Member or any Proponent Advisor by Metrolinx, Infrastructure Ontario, Maple Leafs Sports and Entertainment, Menkes Developments, QuadReal Property Group or the City of Toronto;
 - (ii) is of strategic and/or material relevance to the RFP Process or to the Project; and
 - (iii) is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage.
- (8) The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Sponsors in their sole discretion.

3.9.2 Ineligible Persons

- (1) As a result of their involvement in the Project, the persons named as “**Ineligible Persons**” in the RFP Data Sheet, together with any persons who formerly worked on behalf of either of the Sponsors and in the course of such work had knowledge of confidential information of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair advantage (collectively, “**Ineligible Persons**”), their employees, and any of their subcontractors, advisors, consultants or representatives engaged in respect of this Project and, subject to RFP Sections 3.9.2(3) and 3.9.2(4) any person controlled by, that controls or that is under common control with the Ineligible Persons (each an “**Ineligible Person’s Affiliate**”) are not eligible to participate as a Proponent Team Member or Advisor to the Proponent.
- (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 or Advisor to the Proponent only after it has obtained a written consent from the Sponsors permitting it to participate as a Proponent Team Member or Advisor to the Proponent. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent Team Member or Advisor to the Proponent, the Proponent must submit a request for consent to the Contact Person that includes the following information:
 - (a) the full legal name of the Ineligible Person’s Affiliate that the Proponent wishes to include on its team or as a Proponent Team Member or Advisor to the Proponent;
 - (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 real, perceived or potential Conflict of Interest and whether the impact of such real, perceived or potential Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsors’ decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person’s Affiliate is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsors shall add the Ineligible Person’s Affiliate to the Ineligible Persons list by Addendum.

3.9.3 Conflict of Interest Screening List

- (1) Proponents shall deliver to the Contact Person, no later than the deadline set out in the Timetable, the list of Identified Proponent Parties and other significant individuals having involvement in the preparation and/or oversight of the preparation of the RFP Proposal and, if applicable, Project Proposal, in the forms prescribed by RFP Schedule 7 – RFP Proposal Conflict Screening List, which list shall be used by the Sponsors in their assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Proponent, Identified Proponent Party or any employee or advisor of the Sponsors in respect of the Project.

3.10 Proponent Costs

- (1) Except as otherwise expressly provided in the Alliance Development Agreement in respect of the Shortlisted Proponent only, the Proponent and the Proponent Team Members shall bear all costs and expenses incurred by them relating to any aspect of their participation in this RFP Process, including all costs and expenses related to the Proponent’s involvement in:
- (a) the preparation, presentation and submission of their RFP Proposals;
 - (b) attendance at any Proponents Meeting, Commercially Confidential Meeting Collaborative and Behavioural Assessments or any other meeting, interview or consultation session with the Sponsors;
 - (c) due diligence and information gathering processes;
 - (d) Scheduled Visits;
 - (e) preparation of responses to questions or requests for information from the Sponsors;
 - (f) preparation of the Proponent’s own RFIs during the clarification process; and
 - (g) negotiations.
- (2) Except as explicitly provided in RFP Sections 10.4 and 10.5(3), if applicable, the Sponsors are not liable to pay any costs or expenses of any Proponent or to reimburse or compensate a Proponent under any circumstances, regardless of the outcome of the RFP Process.

3.11 Insurance and WSIB

3.11.1 Insurance Required during the RFP Process

- (1) In addition to any insurance that a Shortlisted Proponent is required to obtain and maintain in force pursuant to the Alliance Development Agreement, during the RFP Process, the Proponent is required to obtain, and to cause all Proponent Team Members and other persons listed in this RFP Section 3.11.1(1) to obtain, and at all times keep and maintain in force the insurance as set out in RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c), whenever the Proponent, a Proponent Team Member, or any of their respective directors, officers, employees, consultants, Advisors, agents or representatives are present at the Lands, or any part thereof, or at any facilities or premises of the Sponsors for any purpose whatsoever:
- (a) Commercial/Comprehensive General Liability and Non-Owned Automobile Liability insurance, having an inclusive limit of not less than \$25,000,000 for each occurrence or accident and covering all sums which the Proponent, a Proponent Team Member or any other persons listed above may become legally obligated to pay for damages as a result of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to, destruction of, or loss of use of property caused by an occurrence or accident arising out of any operations or activities carried out in connection with this RFP or RFP Process. The policy or policies shall include:
- (i) Her Majesty the Queen in right of Ontario, MOI, Infrastructure Ontario and Metrolinx as named insureds and the City of Toronto as an additional named insured (and each of such entities' respective directors, officers, employees, legislators, members, officials, consultants and agents);
 - (ii) an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by Infrastructure Ontario, Her Majesty the Queen in right of Ontario, MOI, and Metrolinx; and
 - (iii) a waiver of subrogation in favour of all named insureds and additional named insureds;
- (b) Automobile insurance, in the amount of \$25,000,000 per accident, for vehicles used by Proponents or Proponent Team Members (or each of such entities' respective directors, officers, employees, consultants, Advisors and agents) while on or at the Lands or on or at any facilities or premises of the Sponsors. Where possible, the policy or policies shall include:
- (i) Her Majesty the Queen in right of Ontario, MOI, Infrastructure Ontario and Metrolinx as named insureds and the City of Toronto as an additional named insured (and each of such entities' respective directors, officers, employees, legislators, members, officials, consultants and agents);
 - (ii) an endorsement specifying that the policy shall be primary and without right of contribution from any insurance otherwise maintained by Infrastructure Ontario, Her Majesty the Queen in right of Ontario, MOI, and Metrolinx; and

- (iii) a waiver of subrogation in favour of all named insureds and additional named insureds; and
 - (c) all other insurance required to be obtained by law including but not limited to WSIB.
- (2) As a condition of allowing access to the Lands or to the facilities or premises of the Sponsors, the Sponsors may, in their sole discretion, require Proponents to provide evidence acceptable to the Sponsors that the insurance required by RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c) is in place.
- (3) If a Proponent proposes to perform any investigations at the Lands, the risk related to which may not be fully insured under the policies set out in RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c), the Sponsors may, in their sole discretion, require the Proponent, at its own cost and expense, to obtain insurance additional to that specified in RFP Sections 3.11.1(1)(a), 3.11.1(1)(b) and 3.11.1(1)(c).
- (4) All insurance policies required to be obtained by Proponents shall provide that the insurance shall not be cancelled, or adversely materially reduced, restricted, modified or changed without the insurer giving at least thirty (30) calendar days' prior written notice to the Sponsors.

3.11.2 WSIB and Employer's Liability

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

3.11.3 Metrolinx Construction Insurance Program

- (1) The Sponsors may determine that certain construction insurance to be provided in respect of Early Works under the Alliance Development Agreement and in respect of Works under the Project Alliance Agreement will be obtained under a Metrolinx obtained Owner Construction Insurance Program ("OCIP"), as set out in the RFP Data Sheet. Details in respect of the OCIP will be posted as Background Information, and may include a form of confidentiality agreement which, if posted, must be entered into between a Shortlisted Proponent and the OCIP Broker of Record.

3.12 Property Matters

3.12.1 Prohibitions on Property Agreements

- (1) Except to the extent permitted pursuant to the Alliance Development Agreement (in respect of the Shortlisted Proponent only), Proponents are not permitted to contact any property owner with respect to any property in connection with this Project, and are not permitted to enter into any property agreement (for example, purchase, option or lease) for any Lands, or for any property adjacent to the Lands prior to the PAA Effective Date.

3.13 Joint Ventures

- (1) If any Identified Proponent Party is a joint venture this must be disclosed in the RFP Proposal, and in that event, Proponents are advised that the Sponsors may insert new clauses in the Alliance Development Agreement and Project Alliance Agreement to ensure that the Alliance Development Agreement and Project Alliance Agreement and their respective obligations take precedence over the terms of any joint venture. To achieve this, the Sponsors will require disclosure of the joint venture agreement to the Sponsors, and may require input into the terms of the joint venture agreement prior to its execution.

3.14 Signalling Work and Track Work

- (1) If there are any special rules or processes that apply with respect to signalling work or track work, such rules or processes will be set out in the RFP Data Sheet.

4 PROPOSAL FORM AND CONTENT REQUIREMENTS

4.1 Format and Content of the RFP Proposal

- (1) Proponents shall submit RFP Proposals organized in accordance with and in the format set out in RFP Schedules 3, 6, 7, 8 and 9.
- (2) Proponents shall submit RFP Proposals in two parts as follows:
 - (a) Part A – RFP Proposal Technical Submission consisting of:
 - (i) a RFP Proposal Submission Form (RFP Schedule 6);
 - (ii) a RFP Proposal Conflict Screening List (RFP Schedule 7) for each Proponent Team Member;
 - (iii) a Proponent Team Member Declaration (RFP Schedule 8) for each Proponent Team Member;
 - (iv) a Certificate of Officer (RFP Schedule 9) for each Proponent Team Member; and
 - (v) the RFP Proposal Technical Submission Information,
(the “**RFP Proposal Technical Submission**”); and
 - (b) Part B – RFP Proposal Commercial Submission consisting of:
 - (i) RFP Proposal Submission Form (RFP Schedule 6); and
 - (ii) RFP Proposal Commercial Submission Information,
(the “**RFP Proposal Commercial Submission**”).
- (3) Proponents shall submit each of Parts A and B of their RFP Proposals in accordance with the requirements and instructions set out in the RFP Documents.

4.2 Format and Content of the Project Proposal

- (1) The Shortlisted Proponent shall submit its Project Proposal in accordance with the requirements and instructions set out in the Alliance Development Agreement.

5 SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE RFP PROPOSAL AND PROJECT PROPOSAL

5.1 Submission of Proposal

- (1) Each Proponent shall submit its RFP Proposal Technical Submission and its RFP Proposal Commercial Submission on or before the RFP Proposal Submission Deadline. For the purposes of the RFP Process, the determination of whether the RFP Proposal Technical Submission or the RFP Proposal Commercial Submission has been submitted before the RFP Proposal Submission Deadline shall be based on the time and date stamp the Proponent receives from the Electronic Submission and Evaluation System identified in the RFP Data Sheet. RFP Proposal Technical Submissions or RFP Proposal Commercial Submissions received after the RFP Proposal Submission Deadline, as documented by the electronic time and date stamp, shall be returned unopened to the sender.
- (2) Proponents shall submit their RFP Proposal Technical Submissions and RFP Proposal Commercial Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that each of the RFP Proposal Technical Submission and the RFP Proposal Commercial Submission is received by Infrastructure Ontario prior to the RFP Proposal Submission Deadline and to ensure it receives a date and time stamp receipt from the Electronic Submission and Evaluation System confirming its timely delivery. The Sponsors will not accept a RFP Proposal Technical Submission or a RFP Proposal Commercial Submission delivered by electronic mail.
- (3) Proponents shall provide such number and type of copies of their RFP Proposal Technical Submissions and RFP Proposal Commercial Submissions as specified in Part 2 to RFP Schedule 3 – RFP Proposal Format, Evaluation and Selection Criteria.
- (4) If there is any difference whatsoever between the copies of a RFP Proposal and the original electronic copy of the RFP Proposal, the original electronic copy of the RFP Proposal shall govern.

5.2 Withdrawal of Proposals

- (1) A Proponent may withdraw its RFP Proposal Technical Submission and its RFP Proposal Commercial Submission using the Electronic Submission and Evaluation System before the RFP Proposal Submission Deadline. The Sponsors will return, unopened, any hard copies of a RFP Proposal Technical Submission and a RFP Proposal Commercial Submission that has been electronically withdrawn in accordance with this RFP Section 5.2.

5.3 Amendment of Proposal

- (1) Proponents may amend their RFP Proposal Technical Submissions or RFP Proposal Commercial Submissions after submission but only if the withdrawn and amended RFP Proposal Technical

Submission or the withdrawn and amended RFP Proposal Commercial Submission (as applicable) is resubmitted before the RFP Proposal Submission Deadline in accordance with the following:

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

5.4 Proposal Irrevocability

- (1) Except as provided in RFP Section 5.5(1) and the Proponent’s right to withdraw a RFP Proposal before the RFP Proposal Submission Deadline, the RFP Proposal shall be irrevocable and shall remain valid and in effect for 365 days after the RFP Proposal Submission Deadline (the “**RFP Proposal Validity Period**”).
- (2) Except as provided in RFP Section 5.5(1) and the Proponent’s right to withdraw a Project Proposal before the Project Proposal Submission Deadline, the Project Proposal shall be irrevocable and remain valid and in effect for 90 days after the Project Proposal Submission Deadline (the “**Project Proposal Validity Period**”) or until the PAA Effective Date, whichever occurs first.

5.5 Extension of Proposal Validity Period

- (1) If the Sponsors wish to extend the RFP Proposal Validity Period, the Sponsors shall submit a request to extend to those Proponents whose RFP Proposals in the Sponsors’ sole discretion, are still under consideration in the RFP Process. A Proponent may, in its discretion, refuse to extend the RFP Proposal Validity Period in accordance with the following:
 - (a) notwithstanding a Proponent’s refusal to extend the RFP Proposal Validity Period, that Proponent’s RFP Proposal shall continue to be valid in accordance with the original RFP Proposal Validity Period; and
 - (b) if the Sponsors determine that they will be unable to determine the Successful Proponent prior to the expiration of the original RFP Proposal Validity Period, the Sponsors may discontinue the evaluation or consideration of a Proponent if that Proponent has refused the Sponsors’ request to extend the RFP Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the RFP Proposal Validity Period.
- (2) If the Sponsors wish to extend the Project Proposal Validity Period, the Sponsors shall submit a request to extend to the Shortlisted Proponent. The Shortlisted Proponent may, in its discretion, refuse to extend the Project Proposal Validity Period. Notwithstanding, the Project Proposal shall continue to be valid in accordance with the original Project Proposal Validity Period.

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 RFP Proposals in accordance with the RFP Documents. The Sponsors, in their sole discretion, will determine the size, structure and composition of the Evaluation Committee and any sub-committees of the Evaluation Committee. The Evaluation Committee may be assisted by and receive advice from any of the Sponsors’ Advisors, and any other employees or representatives of the Sponsors in any manner determined necessary or desirable by the Sponsors.
- (2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the Sponsors.

6.2 Sponsors’ Clarification and Verification of RFP Proposals

- (1) The Sponsors may:
 - (a) require the Proponent to clarify or verify the contents of its RFP Proposal or any statement made by the Proponent;
 - (b) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its RFP Proposal; and
 - (c) seek a Proponent’s acknowledgement of the Sponsors’ interpretation of the RFP Proposal or any part of the RFP Proposal.
- (2) The Sponsors are not obliged to seek clarification or verification of any aspect of a RFP Proposal or any statement by a Proponent, including an ambiguity in a RFP 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 RFP Proposal.

6.3 Determination of Compliance

- (1) For purposes of this RFP, a RFP Proposal is “**non-compliant**” and does not “**comply**” or achieve “**compliance**” with the requirements of the RFP Documents if a RFP Proposal contains a “**Material Deviation**”. A Material Deviation is any failure in a RFP Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsors:

- (a) impedes, in any material way, the ability of the Sponsors to evaluate the RFP Proposal;
 - (b) constitutes an attempt by the Proponent to revise the Sponsors’ or the Proponent’s rights or obligations under the RFP Documents or affects the Sponsors’ ability to enforce the Proponent’s obligations pursuant to the RFP Documents in a way not permitted by this RFP; or
 - (c) constitutes an attempt by the Proponent to revise the Sponsors’ or the Proponent’s rights or obligations under the Alliance Development Agreement or the Project Alliance Agreement.
- (2) A requirement in either this RFP or in the Schedules to this RFP that a Proponent “must” or “shall” do anything is not intended to supersede the concepts of “comply”, “compliance” or “Material Deviation” or any other portion of this RFP Section 6.3.
- (3) Each Proponent acknowledges and agrees that the Sponsors’ evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsors may waive,
- (a) any deviation that is not a Material Deviation at any time; and
 - (b) any Material Deviation in accordance with RFP Section 10.2(3).
- (4) The Sponsors may identify a Material Deviation in a RFP Proposal at any time during the RFP Process and, for clarity, at any step during the evaluation process set out in either RFP Section 6.5.
- (5) Subject to RFP Section 6.3(3)(b), if the Sponsors determine that a RFP Proposal is non-compliant in accordance with RFP Section 6.3, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare that the RFP Proposal shall not be given any further consideration and take such action as permitted under RFP Section 7.1.2. If a declaration by the Sponsors that a RFP Proposal is non-compliant occurs after the scoring of that RFP Proposal has commenced, any scores given to that RFP Proposal shall be declared null and void.

6.4 Non-Compliance Distinguished from Poor Quality

- (1) A RFP Proposal that contains a poor quality response and/or a failure to conform to a requirement of the RFP Documents shall not be deemed to be non-compliant and such poor quality response and/or failure to conform shall not be deemed to be a Material Deviation unless, and only unless, such poor quality response and/or failure to conform to the requirement of the RFP Documents, in the sole discretion of the Sponsors, meets the definition of a Material Deviation as set out in RFP Section 6.3(1).
- (2) A technical compliance or conformance review is only a tool to assist in the evaluation and scoring of RFP Proposal Technical Submissions. Notwithstanding the similarity of terminology, the determination of whether a RFP Proposal in its entirety, is compliant or non-compliant with the requirements of the RFP Documents is not the same as the concept of “technical compliance”, or “technical conformance and/or non-conformance” or any other assessment of quality made during the evaluation and scoring of a RFP Proposal.

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

6.5 Steps in the Evaluation Process of RFP Proposals

6.5.1 Step 1 – Compliance of RFP Proposal Technical Submissions

- (1) In Step 1 of the evaluation process, the Sponsors will open each RFP Proposal Technical Submission and will review the contents of the RFP Proposal Technical Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.
- (2) If the Sponsors identify a Material Deviation in a RFP Proposal Technical Submission, then, subject to RFP Section 6.3(3)(b), the Sponsors may determine that the RFP Proposal to which the RFP Proposal Technical Submission relates is non-compliant in accordance with RFP Section 6.3 and take such action as described in RFP Section 6.3(5).
- (3) In the event that the Sponsors declare a RFP Proposal to be non-compliant and declare that it shall not be further considered before the opening of the RFP Proposal Commercial Submission, the RFP Proposal Commercial Submission of that Proponent will remain unopened and will not be evaluated. Unopened RFP Proposal Commercial Submissions will be returned to Proponents at the conclusion of the RFP Process.

6.5.2 Step 2 – Review of the RFP Proposal Submission Form

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

6.5.3 Step 3 – Review and Scoring of the RFP Proposal Technical Submissions

- (1) In Step 3 of the evaluation process, the RFP Proposal Technical Submissions and the First Round Collaborative and Behavioural Assessments will be evaluated and scored in accordance with Part 1 to RFP Schedule 3 – RFP Proposal Submission Requirements and Part 2 to RFP Schedule 3 – RFP Proposal Format, Evaluation and Selection Criteria.

6.5.4 Step 4 – Compliance of RFP Proposal Commercial Submissions

- (1) In Step 4 of the evaluation process, the Sponsors will open each RFP Proposal Commercial Submission and will review the contents of the RFP Proposal Commercial Submission to assess whether it is in compliance with the terms and conditions of the RFP Documents.

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

6.5.5 Step 5 – Review and Scoring of the RFP Proposal Commercial Submissions

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

6.5.6 Step 6 – Establishing a RFP Proposal Initial Score

- (1) For the purpose of the evaluation process, the weightings and scoring set out in Table 1 of Part 2 to RFP Schedule 3 – RFP Proposal Format, Evaluation and Selection Criteria will apply. For greater certainty, for the purposes of this Step 6, the weightings and scoring for the Collaborative and Behavioural Assessments set out in the column titles “Pre-RFP Submission” in B2 of Table 1 shall apply.
- (2) In Step 6 of the evaluation process, upon receipt by, and acceptance of, the Evaluation Committee of the results of the evaluation process and finalization of the scores of all Proponents’ RFP Proposals, the initial score for each RFP Proposal will be tallied and finalized.
- (3) The score established based on this RFP Section 6.5.6 shall be the “**RFP Proposal Initial Score**”.

6.5.7 Step 7 – Determining the Second Round Proponents for Collaborative and Behavioural Assessments

- (1) In Step 7 of the evaluation process, the Evaluation Committee shall rank only those Proponents that have met all requirements in Steps 1 through 6 of the evaluation process and shall base the ranking on the RFP Proposal Initial Score determined in Step 6.
- (2) The Evaluation Committee shall identify up to two Proponents with the highest RFP Proposal Initial Scores (the “**Second Round Proponents**”) and invite the Second Round Proponents to participate in Second Round Collaborative and Behavioural Assessments.

6.5.8 Step 8 – Ranking the Proponents

- (1) In Step 8 of the evaluation process, the results of the Second Round Collaborative and Behavioural Assessments will be evaluated and scored in accordance with Table 1 of Part 2 to RFP Schedule 3 – RFP Proposal Format, Evaluation and Selection Criteria. For greater certainty, for the purposes of this Step 8, the weightings and scoring for the Collaborative and Behavioural Assessments set out in the column titled “Post-RFP Submission” in B2 of Table 1 shall apply.
- (2) The score established based on this RFP Section 6.5.8 shall be the “**RFP Proposal Final Score**”.

- (3) The Evaluation Committee shall identify the highest ranked Proponent based upon the RFP Proposal Final Score, which Proponent shall be identified as the Shortlisted Proponent and be invited to execute the Alliance Development Agreement with the Sponsors.
- (4) In the event that the RFP Proposal Final Scores of the Second Round Proponents are tied, the Second Round Proponent that has scored higher in the Second Round Collaborative and Behavioural Assessments shall be identified as the Shortlisted Proponent and be invited to execute the Alliance Development Agreement with the Sponsors.

7 GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

- (1) The Sponsors shall, in their sole discretion, determine:
 - (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
 - (b) whether a RFP Proposal is compliant with the RFP Documents;
 - (c) whether a failure to comply constitutes a Material Deviation;
 - (d) whether Key Individuals are acceptable to the Sponsors;
 - (e) the RFP Proposal Initial Score of a RFP Proposal;
 - (f) the RFP Proposal Final Score of a RFP Proposal;
 - (g) the rankings of the RFP Proposals; and
 - (h) whether a RFP 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 RFP Proposals is not limited or restricted in any way by the fact that a prequalification process preceded this RFP Process.
- (3) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of the RFP Proposals or in the exercise of any of the Sponsors' rights under this RFP:
 - (a) any instances of poor performance by a Proponent or a Proponent Team Member that the Sponsors have experienced; and/or
 - (b) any publicly available information about a Proponent or a Proponent Team Member that is, in the Sponsors' sole discretion, credible information.

- (4) Pursuant to the page limit restrictions applicable to any portion of a RFP Proposal as described in this RFP, the Sponsors shall, without discretion, neither review nor score any pages of a RFP Proposal that exceed the maximum number of pages specified for the applicable portion of the RFP Proposal.

7.1.2 Disqualification

- (1) The Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member, a RFP Proposal or a Project Proposal or reverse their decision to (i) select a Shortlisted Proponent to proceed to the AD Phase and execute an Alliance Development Agreement with the Sponsors; or (ii) make an award (even if the award has already been made to the Shortlisted Proponent under this RFP) at any time prior to the PAA Effective Date, if,
- (a) the RFP Proposal or Project Proposal, as the case may be, 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 RFP Proposal, in its Project Proposal (if applicable), during the Collaborative and Behavioural Assessments, or during the Financial Establishment Audit;
 - (c) the Proponent contravenes RFP Section 3.3.2 or RFP Section 3.3.3;
 - (d) the Proponent fails to comply with Applicable Law;
 - (e) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates have engaged in a Prohibited Act;
 - (f) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates are a Restricted Person;
 - (g) the RFP Proposal, including any officer's certificate or any form attached to the RFP Proposal, contains false or misleading information or a misrepresentation;
 - (h) the Project Proposal, including any officer's certificate or any form attached to the Project Proposal, contains false or misleading information or a misrepresentation;
 - (i) the Proponent or any Proponent Team Member fails to disclose any information (including in any officer's certificate or any other form attached to the RFP Proposal or the Project Proposal (if applicable) in connection with this RFP) that would materially adversely affect the Sponsors' evaluation of the RFP Proposal or Project Proposal, as applicable;
 - (j) the RFP Proposal or Project 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);
- (k) in the 36 months prior to the RFP Proposal Submission Deadline, the Sponsors became aware that the Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor, unless the Proponent has demonstrated to the satisfaction of the Sponsors that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (l) in the 36 months prior to the Project Proposal Submission Deadline, the Sponsors became aware that the Shortlisted Proponent or any Proponent Team Member failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsors, unless the Shortlisted Proponent has demonstrated to the satisfaction of the Sponsors that the Shortlisted Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;
- (m) in the opinion of the Sponsors, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's RFP Proposal or Project Proposal or otherwise contravened RFP Section 3.3.4;
- (n) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (o) 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;
- (p) 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;
- (q) the Proponent, or any Proponent Team Member, has an economic or other interest or relationship that:
 - (i) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
 - (ii) could potentially compromise the Sponsors' reputation or integrity or the Sponsors' procurement process, so as to affect public confidence in that process, whether or not such interest creates a Conflict of Interest;
- (r) the Proponent or a Proponent Team Member fails to attend a Collaborative and Behavioural Assessment;

- (s) the Shortlisted Proponent fails to execute the Draft Alliance Development Agreement; or
- (t) the Alliance Development Agreement is terminated by the Sponsors in accordance with its terms.

8 THE IDENTIFICATION OF A SHORTLISTED PROPONENT AND A SUCCESSFUL PROPONENT

8.1 Evaluation Results and the Identification of a Shortlisted Proponent

- (1) Based on the RFP Proposal Final Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the RFP Proposal Validity Period identify the highest ranked Proponent as the Shortlisted Proponent and enter into an Alliance Development Agreement with such Shortlisted Proponent.
- (2) Based on the RFP Proposal Final Scores, the Sponsors will also identify the second highest ranking Proponent (the “**Second Ranked AD Phase Proponent**”). If (a) the first selected Shortlisted Proponent is not selected by the Sponsors as the Successful Proponent during the AD Phase; or (b) the Alliance Development Agreement is terminated in accordance with its terms at any time during the AD Phase, the Sponsors may, in either such case, and in their sole discretion, enter into an Alliance Development Agreement with the Second Ranked AD Phase Proponent and proceed through the AD Phase with the Second Ranked AD Phase Proponent.
- (3) Notwithstanding any negotiations between the Sponsors and the Proponents, the RFP Proposals of all Proponents shall remain valid and irrevocable until the expiration of the RFP Proposal Validity Period in accordance with RFP Section 5.4(1).

9 SHORTLISTED PROPONENT

9.1 Identification of the Shortlisted Proponent

- (1) Subject to RFP Sections 10.1 and 10.2, the Sponsors intend to identify a Shortlisted Proponent in accordance with RFP Section 8.1(1).

9.2 Shortlisted Proponent Obligations

- (1) The Shortlisted Proponent shall,
 - (a) cause each Proponent Team Member to execute the Alliance Development Agreement with the Sponsors,
 - (i) prior to the ADA Effective Date Target Date; or
 - (ii) if the ADA Effective Date Target Date has passed, unless the Sponsors have given their consent, prior to the expiration of the RFP Proposal Validity Period (or the extended RFP Proposal Validity Period, if applicable),

based on the Alliance Development Agreement in the same form and content as finalized prior to the RFP Proposal Submission Deadline.

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 RFP Proposals;
 - (b) reject the Key Individuals proposed in an RFP Proposal and, if not satisfactorily substituted, reject the RFP Proposal;
 - (c) accept any RFP Proposal and enter into an Alliance Development Agreement with a Shortlisted Proponent and to subsequently terminate an Alliance Development Agreement;
 - (d) if only one RFP Proposal is received, elect to accept or reject it or enter into an Alliance Development Agreement with the Proponent;
 - (e) elect to discontinue the RFP Process at any time before the end of the RFP Process, including after the identification of a Successful Proponent but before the PAA Effective Date;
 - (f) alter the Timetable, the RFP Process or any other aspect of this RFP; and
 - (g) cancel this RFP Process and subsequently advertise or call for new submissions for the same or different subject matter of these RFP Documents with the same or different participants.
- (2) As part of a Proponent's RFP Proposal, each Proponent Team Member of any Proponent is required to provide a certificate of an officer from such Proponent Team Member in the form attached as RFP Schedule 9 – Certificate of Officer. 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 RFP Proposal, that any Proponent Team Member of any Proponent provide or resubmit a certificate of an officer from such Proponent Team Member in the form attached as RFP Schedule 9 – Certificate of Officer.
- (3) Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion:
 - (a) impose at any time on all Proponents and any Proponent Team Members additional conditions, requirements or measures with respect to bidding practices or ethical behaviour of the Proponents and Proponent Team Members; and
 - (b) require that any or all Proponents and/or any Proponent Team Member at any time during the RFP Process provide the Sponsors with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and all Proponent Team Members with such policies, processes and controls.

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

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

10.2 Special Circumstances

- (1) If the Sponsors determine that all of the RFP Proposals submitted are non-compliant in accordance with RFP Section 6.3, the Sponsors may, in their sole discretion:
- (a) take any action in accordance with RFP Section 10.1;
 - (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their RFP Proposals for re-submission; or
 - (c) enter into negotiations with any one of the Proponents to attempt to finalize an agreement and enter into an Alliance Development Agreement with such Proponent.
- (2) If the Sponsors receive,
- (a) one RFP Proposal and that RFP Proposal is compliant; or
 - (b) more than one RFP Proposal, but only one compliant RFP Proposal,
- the Sponsors may, in their sole discretion:
- (i) take any action in accordance with RFP Section 10.1(1); or
 - (ii) cancel this RFP and subsequently enter into an Alliance Development Agreement with the Proponent that submitted a compliant RFP Proposal.
- (3) The Sponsors may, in their sole discretion, waive a Material Deviation in a RFP Proposal and, therefore, waive a material failure to comply with the requirements of the RFP Documents, including, for clarity, any requirements set forth in the Alliance Development Agreement. The Sponsors may, in their sole discretion, decline to disqualify a non-compliant RFP Proposal.
- (4) If at any time prior to the RFP Proposal Submission Deadline, a Proponent is disqualified or withdraws from the RFP Process, the Sponsors may, in their discretion, invite a Reserve

Prequalified Party to participate in the RFP Process. Prior to and as a condition of becoming a Prequalified Party and a Proponent under this RFP, such Reserve Prequalified Party shall be required to satisfy the requirements of Section 5.2(3) of the RFQ. Upon the satisfaction of such conditions, such Reserve Prequalified Party shall become a Prequalified Party and a Proponent under this RFP.

10.3 Sponsors' Liability for Proponent's Costs

- (1) Except as provided in RFP Section 10.3.2, neither the Sponsors nor the Government of Ontario shall be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent Team Member, any Proponent Advisor or any person connected with any one of them, as a result of any action taken by the Sponsors in accordance with RFP Sections 10.1 or 10.2.

10.4 Proposal Fee

- (1) If the Sponsors specify in the RFP Data Sheet that they offer a Proposal Fee for this Project, such Proposal Fee plus any applicable HST shall be paid by the Sponsors to each Proponent other than the Proponent that enters into the Project Alliance Agreement with the Sponsors, subject to the following conditions:
 - (a) a Proponent must submit a full and proper RFP Proposal for that Proponent to be eligible for the Proposal Fee, provided that the Sponsors shall determine whether a RFP Proposal is full and proper based on factors that include whether the RFP Proposal is compliant with this RFP (as determined in accordance with RFP Section 6.3) and whether the RFP Proposal received a RFP Proposal Final Score with respect to its RFP Proposal Technical Submission of at least 50%;
 - (b) a Proponent must not withdraw from this RFP Process after the RFP Proposal Submission Deadline in contravention of this RFP;
 - (c) if the Sponsors hold back a portion of profit and overhead payable to the Shortlisted Proponent in respect of Early Works pursuant to the Alliance Development Agreement, then the Shortlisted Proponent will not be eligible to receive the Proposal Fee; and
 - (d) the Project Alliance Agreement must be entered into between the Successful Proponent and the Sponsors.
- (2) The amount of the Proposal Fee that will be paid by the Sponsors to each eligible Proponent in accordance with RFP Section 10.4(1) is set out in the RFP Data Sheet. Any additional requirements for Proponents to take into consideration in relation to the Proposal Fee are set out in the RFP Data Sheet.
- (3) Payment of a Proposal Fee shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Proponent and Proponent Team Members in connection with this RFP, and the Sponsors' obligation to pay the Proposal Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from the Proponent and Proponent Team Members to that effect.

10.5 Applicable Law, Attornment and Limit on Liability

- (1) This RFP shall be governed and construed in accordance with Applicable Law as defined in the Project Alliance Agreement.
- (2) The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
 - (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 10.5.
- (3) Except as provided in RFP Section 10.4, the Proponent agrees that if the Sponsors or the Sponsors' Advisors commit a material breach of their obligations under or in connection with this RFP, 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 RFP Proposal preparation costs that the Proponent seeking damages from the Sponsors can demonstrate; and
 - (b) the Proposal Fee.

10.6 Licences, Permits, etc.

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

10.7 Power of Legislative Assembly

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

11 NOTIFICATION AND DEBRIEFING

- (1) Any time after the Shortlisted 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 and will notify the Second Ranked AD Phase Proponent that it is the second highest ranked proponent. Notwithstanding such notification, the Proponents' RFP Proposals shall be irrevocable until the expiration of the RFP Proposal Validity Period (or extended RFP Proposal Validity Period, if applicable) in accordance with RFP Section 5.4.
- (2) Any time after the PAA Effective Date, 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.

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 Alliance Development Agreement and Project Alliance Agreement. In the event of a conflict or inconstancy between the defined terms in the Alliance Development Agreement and the Project Alliance Agreement, the defined term in the Project Alliance Agreement shall prevail. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.
- (2) Any reference in this RFP to a submission deadline means the noted time to the second, even where seconds are not explicitly noted. For greater certainty, a submission deadline is as of the zero count in seconds of the noted time.
- (3) All references in this RFP to the Sponsors' or Infrastructure Ontario's "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.
- (4) All references in this RFP to "day" or "days" means calendar days, unless otherwise stated.

12.2 RFP Definitions

Whenever used in the RFP:

- (1) "Acquiree" is defined in RFP Section 3.6(9);
- (2) "Acquirer" is defined in RFP Section 3.6(9);
- (3) "Addendum" means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7;
- (4) "ADA Effective Date" means the date the Alliance Development Agreement is signed by the Sponsors and the Proponent Team Members of the Successful Proponent;
- (5) "ADA Effective Date Target Date" means the date set out in the Timetable as target date to execute the Alliance Development Agreement;

- (6) “AD Phase” is defined in RFP Section 1.3(1)(b);
- (7) “Advisor” means any person or firm retained to provide professional advice to any one of the Sponsors, a Proponent or a Proponent Team Member, as applicable;
- (8) “Affiliate” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (9) “Alliance” means the alliance to be formed between the Sponsors and the Successful Proponent which will be governed by the Project Alliance Agreement;
- (10) “Alliance Charter” means the alliance charter (including alliance principles, alliance purpose and alliance objectives) to be set out in the Project Alliance Agreement;
- (11) “Alliance Development Agreement” or “ADA” means the alliance development agreement for the Project entered into between the Sponsors and Non-Owner Participants of the Shortlisted Proponent under which the Project Proposal is developed for the approval (or otherwise) of the Sponsors;
- (12) “Alliance Director” means the person appointed by the ALT to manage the Alliance under the Project Alliance Agreement;
- (13) “Alliance Objectives” means the Alliance objectives set out in the VFM Statement;
- (14) “Alliance Leadership Team” or “ALT” means the leadership team to be established under the Project Alliance Agreement;
- (15) “Alliance Management Team” or “AMT” means the management team to be established under the Project Alliance Agreement;
- (16) “Alliance Project Team” means the delivery organization established and maintained by the Participants in accordance with the Project Alliance Agreement;
- (17) “ALT Key Individual” has the meaning given in Section 1.2 of Appendix B to Part 1 to RFP Schedule 3 – RFP Proposal Submission Requirements;
- (18) “AMT Key Individual” has the meaning given in Section 1.3 of Appendix B to Part 1 to RFP Schedule 3 – RFP Proposal Submission Requirements;
- (19) “Applicable Law” means:
 - (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgement of a relevant court of law, board, arbitrator or administrative authority which is a binding precedent in the Province of Ontario;

in each case, in force in the Province of Ontario;

- (20) “Authority Requirements” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority;
- (21) “Background Information” means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (22) “Business Day” means any day other than a Saturday, a Sunday, a statutory holiday in the province of Ontario or any day on which banks are not open for business in the city of Toronto, Ontario;
- (23) “Collaborative and Behavioural Assessment” is defined in RFP Section 3.4.3(1);
- (24) “Commercial Framework” means the commercial framework described in RFP Schedule 5 – Commercial Framework;
- (25) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);
- (26) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);
- (27) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (28) “Conflict of Interest” is defined in RFP Section 3.9.1(7);
- (29) “Construction Prime Team Member” means the entity or joint venture that will undertake at least 25 percent of the construction work based on the estimated construction costs of the Project, as such team member is identified in the Proponent’s Prequalification Submission;
- (30) “Contact Person” is defined in RFP Section 3.2.1(1);
- (31) “Data Room” is defined in RFP Section 2.4(1);
- (32) “Design Prime Team Member” means the entity or joint venture that will play the lead design role for the Project, as such team member is identified in the Proponent’s Prequalification Submission;
- (33) “Draft Alliance Development Agreement” means the draft Alliance Development Agreement in the form attached as RFP Schedule 10 – Form of Alliance Development Agreement;
- (34) “Draft Project Alliance Agreement” means the draft Project Alliance Agreement in the form attached as RFP Schedule 11 – Form of Project Alliance Agreement;
- (35) “Early Works” has the meaning given in the Draft Alliance Development Agreement.
- (36) “Electronic Submission and Evaluation System” means the electronic tendering software named AWARD® by Commerce Decisions®;
- (37) “Evaluation Committee” is defined in RFP Section 6.1(1);
- (38) “Existing Infrastructure” means (i) the existing infrastructure located on the Lands that is owned by Metrolinx, including, for clarity, railway tracks, signals, Union Station, rail platforms, vertical

access, the trainshed, bridges, vehicles, signage, shelters, access roads, and electrical, mechanical and communication systems; and (ii) the existing public realm, road, utility infrastructure, crash wall, or any other infrastructure situated on the Lands, owned by the MTO, the City of Toronto, utility companies, railway companies, adjacent property Sponsors or any other third party;

- (39) “Fairness Monitor” is defined in the RFP Data Sheet;
- (40) “Financial Establishment Audit” has the meaning given in the Draft Alliance Development Agreement;
- (41) “FIPPA” is defined in RFP Section 3.8.1(1);
- (42) “First CBA Workshop” has the meaning given in Section 6.0(d)(i) of RFP Schedule 2 – Consultation and Interview Process;
- (43) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);
- (44) “Governance Plan” has the meaning given in the Draft Project Alliance Agreement;
- (45) “Governmental Authority” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Sponsors or any aspect of the performance of this Agreement, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction;
- (46) “Government of Ontario” means Her Majesty the Queen in Right of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;
- (47) “Identified Proponent Parties” is defined in RFP Section 3.6(1);
- (48) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (49) “Ineligible Person’s Affiliate” is defined in RFP Section 3.9.2(1);
- (50) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (51) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (52) “IO” is defined in RFP Section 1.1(1);
- (53) “Key Individual” means those individuals identified in the Proponent’s RFP Proposal Technical Submission as key individuals;
- (54) “Lands” has the meaning given in the Draft Project Alliance Agreement;
- (55) “Material Deviation” is defined in RFP Section 6.3(1);

- (56) “Metrolinx CSMP” means the Metrolinx Capital Project Group Construction Safety Program;
- (57) “MTO” or “Ministry of Transportation” means Her Majesty the Queen in right of Ontario as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegate power and such Minister’s authority;
- (58) “MOI” is defined in RFP Section 1.1(6);
- (59) “Non-Owner Participant” or “NOP” means a Proponent Team Member or a Proponent that will enter the Alliance Development Agreement in the event such Proponent is selected as the Shortlisted Proponent;
- (60) “NOP Split” has the meaning given in Section 1.3 of Appendix C to Part 1 of RFP Schedule 3 – RFP Proposal Submission Requirements;
- (61) “OCIP” is defined in RFP Section 3.11.3(1);
- (62) “OCIP Broker of Record” means Marsh Canada Limited;
- (63) “OILC” is defined in RFP Section 1.1(1);
- (64) “OnCorr” has the meaning given in RFP Section 1.1(2);
- (65) “Overhead” has the meaning given in the Draft Project Alliance Agreement;
- (66) “Owner” has the meaning given in the Draft Project Alliance Agreement;
- (67) “PAA Effective Date” means the date the Project Alliance Agreement is signed by the Sponsors and the Non-Sponsors Participants of the Successful Proponent;
- (68) “PAA Effective Date Target Date” means the date set out in the Timetable as the target date to execute the Project Alliance Agreement;
- (69) “Participant” means a party to the Project Alliance Agreement;
- (70) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);
- (71) “Prequalification Submission” is defined in RFP Section 1.2(1);
- (72) “Prequalified Parties” is defined in RFP Section 1.2(1);
- (73) “Profit” has the meaning given in the Draft Project Alliance Agreement;
- (74) “Prohibited Act” means:
- (a) offering, giving or agreeing to give to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward;

- (i) for doing or not doing, or for having done or not having done, any act in relation to a Proponent becoming a Second Ranked AD Phase Proponent, a Shortlisted Proponent or the Successful Proponent; or
- (ii) for showing or not showing favour or disfavour to any person in relation to a RFP Proposal or Project Proposal;

provided that this definition shall not apply to a Proponent or Proponent Team Member (or anyone employed by or acting on their behalf) providing consideration to the Sponsors or any public body in the ordinary course;

- (b) entering into any other agreement with the Sponsors or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by a Proponent or any Proponent Team Members, Key Individuals or any of their Affiliates, or on its behalf or to its knowledge, to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to the Sponsors, provided that this definition shall not apply to a fee or commission paid by the Proponent or any Proponent Team Member or any of their Affiliates (or anyone employed by or acting on their behalf) to the Sponsors or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course without contravening the intent of this section;
 - (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to this RFP Process; or
 - (d) defrauding or attempting to defraud or conspiring to defraud the Sponsors or any other public body;
- (75) “Prohibited Contacts” is defined in RFP Section 3.3.2(2);
- (76) “Project” is defined in RFP Section 1.1(2);
- (77) “Project Alliance Agreement” or “PAA” means the project alliance agreement for the Project to be entered into between the Sponsors and the Non-Owner Participants of the Successful Proponent under which the Works (as defined therein) will be performed;
- (78) “Project Proposal” is defined in RFP Section 1.1(3);
- (79) “Project Proposal Validity Period” is defined in RFP Section 5.4(2);
- (80) “Proponent” is defined in RFP Section 1.1(3);
- (81) “Proponent Representative” is defined in RFP Section 1.2(2);
- (82) “Proponent Team Member” means (1) a member of a Prequalified Party’s team identified as a “Prime Team Member” in its Prequalification Submission and (2) upon successful qualification pursuant to RFP Section 3.14, the Signalling Provider identified by the Proponent in its Signalling Provider Submission;

- (83) “Proponents Meeting” is defined in RFP Section 3.4.1(1);
- (84) “Proponent Team Member Declaration” means the declaration form submitted by a Proponent as part of its RFP Proposal in the form attached as RFP Schedule 8 – Proponent Team Member Declaration;
- (85) “Proposal Fee” means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a RFP Proposal, as determined by the Sponsors in accordance with RFP Section 10.4;
- (86) “Proposal Submission Form” means the submission form submitted by a Proponent as part of its RFP Proposal in the form attached as RFP Schedule 6 – Proposal Submission Form;
- (87) “Proposal Validity Period” means the later to occur of:
- (i) the RFP Proposal Validity Period; and
 - (ii) the Project Proposal Validity Period;
- (88) “Proposed Change in Identified Proponent Party” is defined in RFP Section 3.6(3);
- (89) “Reserve Prequalified Party” has the meaning provided in the RFQ;
- (90) “Responsibilities Matrix” means the responsibilities matrix designating roles and responsibilities under the Project Alliance Agreement, as set out in Schedule 6 of the Project Alliance Agreement;
- (91) “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, he or she (or in the case of a legal entity, any members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

- (e) is subject to a material claim of the Sponsors or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Sponsors’ view, in either case, be reasonably likely to materially affect the ability of the Proponent to perform its obligations under the Alliance Development Agreement and Project Alliance Agreement, if it were to become the successful Proponent under the RFP Process; or
 - (f) has a material interest in the production of tobacco products;
- (92) “RFP” is defined in RFP Section 3.2.2(1);
 - (93) “RFP” is defined in RFP Section 1.1(1);
 - (94) “RFP Data Sheet” means RFP Schedule 1 to this RFP;
 - (95) “RFP Documents” is defined in RFP Section 2.1;
 - (96) “RFP Phase” is defined in RFP Section 1.3(1)(b);
 - (97) “RFP Process” is defined in RFP Section 1.1(4);
 - (98) “RFP Proposal” is defined in RFP Section 1.1(3);
 - (99) “RFP Proposal Commercial Submission” has the meaning in RFP Section 4.1(2)(b);
 - (100) “RFP Proposal Commercial Submission Information” means the component of the RFP Proposal submitted in response to the requirements set out in Appendix C of Part 1 to RFP Schedule 3 – RFP Proposal Submission Requirements;
 - (101) “RFP Proposal Final Score” is defined in RFP Section 6.5.8(2);
 - (102) “RFP Proposal Initial Score” is defined in RFP Section 6.5.6(3);
 - (103) “RFP Proposal Information” is defined in RFP Section 3.8.4(4);
 - (104) “RFP Proposal Information Licence” is defined in RFP Section 3.8.4(3);
 - (105) “RFP Proposal Submission Deadline” is defined in RFP Section 3.1(1);
 - (106) “RFP Proposal Technical Submission” has the meaning given in RFP Section 4.1(2)(a);
 - (107) “RFP Proposal Technical Submission Information” means the component of the RFP Proposal submitted in response to the requirements set out in Appendix A and Appendix B of Part 1 to RFP Schedule 3 – RFP Proposal Submission Requirements;
 - (108) “RFP Proposal Validity Period” is defined in RFP Section 5.4(1);
 - (109) “RFQ” is defined in RFP Section 1.2(1);

- (110) “Risk or Reward Regime” has the meaning given in the Draft Project Alliance Agreement;
- (111) “Scheduled Visit” is defined in RFP Section 3.5.1(1);
- (112) “Second Ranked AD Phase Proponent” is defined in RFP Section 8.1(2);
- (113) “Shortlisted Proponent” is defined in RFP Section 1.1(3);
- (114) “Signalling Provider Submission” has the meaning given in Section 1 of Appendix A to RFP Schedule 1 – RFP Data Sheet;
- (115) “Signalling Work” has the meaning given in Section 1 of Appendix A to RFP Schedule 1 – RFP Data Sheet;
- (116) “Signing Parties” is defined in RFP Section 1.1(9);
- (117) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and Metrolinx;
- (118) “Successful Proponent” is defined in RFP Section 1.1(3);
- (119) “Target Outturn Cost” has the meaning given in the Draft Project Alliance Agreement;
- (120) “Timetable” is defined in RFP Section 3.1(1);
- (121) “USEP” has the meaning given in RFP Section 1.1(2); and
- (122) “Works” means the Early Works and Works (as defined in the Draft Project Alliance Agreement).