



Request for Proposals

to

Construct

**Quinte Healthcare Corporation: Prince Edward County
Memorial Hospital (IO198-QHC)**

RFP# 22-394

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REQUEST FOR PROPOSALS

SECTION 1 – INTRODUCTION

1.1 General

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

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

(3) Except as provided in RFP Section 1.1(3)(a), the procurement process to select a Preferred Proponent shall commence with the issuance of this RFP and shall terminate on the Execution Date or on the expiration of the Proposal Validity Period (or extended Proposal Validity Period, if applicable) whichever is first (the “**RFP Process**”). Except as provided in RFP Section 10.3.2, only Proponents that submit a Proposal in accordance with this RFP will acquire any rights under the RFP. Except as provided in RFP Sections 3.8.2 and 3.8.3 and except for the Sponsors’ obligation to pay a Break Fee, all rights and obligations arising out of the RFP (the bidding contract or “**Contract A**”) terminate either on the cancellation of this RFP Process by the Sponsors, if such cancellation occurs, or,

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

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

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

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

1.2 Prequalified Parties and Proponent Representatives

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

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

1.3 Overview of the Stages of Project Procurement and Implementation

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

(a) Stage 1 – Prequalification Stage

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

(b) Stage 2 – RFP Procurement Process

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

(c) Stage 3 – Implementation of the Contract

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

1.4 Fairness Monitor

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

SECTION 2 – THE RFP DOCUMENTS AND THE DATA ROOM

2.1 RFP Documents

- (1) The RFP Documents (the “**RFP Documents**”) are:
- (a) this RFP;
 - (b) Schedule 1 – RFP Data Sheet;
 - (c) Schedule 2 – Proponent Consultation Process;
 - (d) Schedule 3 – Submission Requirements and Evaluation Criteria consisting of:
 - (i) Part 1 – Technical Submission Requirements;
 - (ii) Part 2 – Financial Submission Requirements;
 - (iii) Part 3 – Alternative and Separate Prices;
 - (iv) Part 4 – Proposal Format and Evaluation;
 - (e) Schedule 4 – Proposal Submission Forms;
 - (f) Schedule 4A – Participant Conflict Screening List
 - (g) Schedule 5 – Proponent Team Member Declaration;
 - (h) Schedule 5A – Certificate of Officer;
 - (i) Schedule 5B – Form of Accounting Firm Letter;
 - (j) Schedule 6 – Contract Price and Proposal Cost Summary Form;
 - (k) Schedule 7A – Standby Letter of Credit;
 - (l) Schedule 7B – Surety’s Consent;

- (m) Schedule 8 – Form of Contract (including all related Schedules, appendices and attachments) as listed in the RFP Data Sheet; and
- (n) Addenda to the RFP Documents, if any.

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

2.2 Conflicts or Inconsistencies in Documents

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

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

(2) Despite RFP Section 2.2(1), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2.2 and, for greater clarity, by the applicable deadline set out in the RFP Data Sheet for the submission of RFIs.

(3) If there is a conflict or inconsistency between:

- (a) the Sponsors' electronic version of an RFP Document as contained in the Data Room; and
- (b) any other version of the same RFP Document (whether in electronic or hard copy),

the Sponsors' electronic version as contained in the Data Room shall govern.

(4) If there is any conflict or inconsistency between documents, including RFP Documents, contained in the Data Room and documents that are downloaded by the Proponent, the documents contained in the Data Room shall govern.

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

2.3 Distribution of Documents to Proponents

(1) Except as provided in RFP Section 2.3(2), Infrastructure Ontario will circulate this RFP and all other RFP Documents, including Addenda, by placing them in the Data Room and notifying the Proponent Representatives by e-mail that RFP Documents or Addenda, as applicable, have been added to the Data Room. Notification to Proponents by Infrastructure Ontario that documents have been added to the Data Room is a courtesy only and Proponents are solely responsible to ensure that they have reviewed all documents in the Data Room in accordance with RFP Section 2.4(3) and, in particular, have reviewed all documents in the Data Room immediately prior to submitting Proposals.

(2) The Sponsors may circulate some RFP Documents in paper copy. If the Sponsors circulate any RFP Documents in paper copy, Proponents will be notified of a paper copy circulation by way of a notice in the Data Room.

2.4 Data Room

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

- (a) the distribution of RFP Documents and Addenda (including “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, due diligence or to perform any other investigations, including seeking independent advice, considered necessary by the Proponent to satisfy itself as to all existing conditions affecting the Project or the Contract. The Proponents' and Proponent Team Members' obligations set out in this RFP Section 2.5 apply irrespective of any Background Information in the Data Room or information contained in the RFP Documents or in responses to RFIs. The Proponents' and Proponent Team Members' obligation to carry out independent research, investigations, due diligence or to seek independent advice or, if applicable, their ability to rely on information provided by the Sponsors is more particularly set out in the Contract.

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

SECTION 3 – THE RFP PROCESS

3.1 RFP Process Timetable

(1) The deadline for the submission of the Technical Submission (the “**Technical Submission Deadline**”), the deadline for the submission of the Financial Submission (the “**Financial Submission Deadline**”), and the general timetable for the RFP Process (the “**Timetable**”) are set out in the RFP Data Sheet.

- (2) The Sponsors may amend the Timetable in their sole discretion:
 - (a) at any time prior to the Technical Submission Deadline or the Financial Submission Deadline for events that are to occur prior to or on the Technical Submission Deadline or the Financial Submission Deadline, as applicable,

including the Technical Submission Deadline itself or the Financial Submission Deadline itself; and

- (b) at any time in the RFP Process for events that are to occur after the Financial Submission Deadline.

(3) Without limiting RFP Section 3.1(2), the approximate final date that the Sponsors intend to issue Background Information is set out in the Timetable.

3.2 Questions and RFP Documents Comments

3.2.1 Contact Person

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

3.2.2 Clarification/RFI Submission Process

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

- (a) A Proponent is 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**”); and
 - (iii) General RFIs or Commercially Confidential RFIs that may be submitted by a Proponent according to the timetable set out in the RFP Data Sheet that are directly and specifically related to the clarification of and compliance with Schedule 6 – Contract Price and Proposal Cost Summary Form (each a “**Financial RFI**”);
- (b) if the Sponsors disagree with the Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsors will give the Proponent an opportunity to either categorize the RFI as a General RFI or to withdraw the RFI;

- (c) if the Sponsors determine, in their sole discretion, that a Commercially Confidential RFI, even if it is withdrawn by a Proponent, is of general application or would provide a significant clarification of the RFP Documents or RFP Process to Proponents, the Sponsors may issue a clarification to Proponents that deals with the same subject matter as the withdrawn Commercially Confidential RFI; 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; and
- (e) if the Sponsors determine, in their sole discretion, that an RFI submitted by a Proponent as a Financial RFI is not directly related to the requirements of Financial RFI set out in Section 3.2.2(1)(a)(iii), the RFI may be rejected for review.

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

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

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

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

(6) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with RFP Section 3.2.2 and, for greater clarity, by the applicable deadline set out in the Timetable for the submission of RFIs. Neither of the Sponsors nor the Government of Ontario is responsible in any way whatsoever for any misunderstanding by the Proponent or any of its Proponent Team Members of the RFP Documents, Background Information, responses to RFIs, any documents placed in the Data Room or any other type of information provided by or communication made by the Sponsors or the Government of Ontario.

3.2.3 RFP Documents Comments

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

3.3 Communications Restrictions

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

(1) Subject to the restrictions in RFP Section 3.3.2 and any special rules set out in the RFP Data Sheet, Proponents, Proponent Team Members and their respective Advisors are permitted to communicate directly with any municipality, government authority or utility with respect to municipal, utility or other types of governmental requirements related to the Project. Under no circumstances will 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 of the Sponsors nor the Government of Ontario is, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which Proponents, Proponent Team Members or their respective Advisors receive or believe they may have received from a municipality, a government authority, a utility or any other person. Proponents, Proponent Team Members and their respective Advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors or the Government of Ontario.

3.3.2 Prohibited Contacts and Lobbying Prohibition

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

(2) Without limiting the generality of RFP Section 3.3.2(1), neither Proponents nor Proponent Team Members nor any of their respective Advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following persons or organizations on matters related to the RFP Process, the RFP Documents, or the Proposals:

- (a) any member of the Evaluation Committee;
- (b) any Advisor to the Sponsors or the Evaluation Committee;
- (c) any employee or representative of:

- (i) the Sponsors;
- (ii) MOI or any other Ministry, agency or entity listed in the RFP Data Sheet; or
- (iii) the Premier of Ontario's office or the Ontario Cabinet office;
- (d) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
- (e) any directors, officers or consultants of any entity listed in RFP Sections 3.3.2(2)(a) to (d).

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

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

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

3.3.3 Media Releases, Public Disclosures and Public Announcements

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

(2) Neither the Proponents nor the Proponent Team Members or any of their respective Advisors, employees or representatives shall make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent or Proposal or to publicly promote or advertise their own qualifications, interest in or participation in the RFP Process without the Sponsors' prior written consent, which consent may be withheld in the Sponsors' sole discretion. Notwithstanding this RFP Section 3.3.3(2), Proponents, Proponent Team Members and their respective Advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.

(3) For the purpose of greater clarity, RFP Section 3.3.3(2) does not prohibit disclosures necessary to permit the Proponent to discuss the Project with prospective

subcontractors but such disclosure is permitted only to the extent necessary to solicit those subcontractors' participation in the Project.

3.3.4 Restrictions on Communications between Proponents – No Collusion

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

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

3.4 Meetings with Proponents

3.4.1 General Proponents Meeting(s)

(1) The Sponsors may, in their sole discretion, convene general Proponents meetings (each, a “**Proponents Meeting**”) on the dates and at the times set out in the Timetable and at the location and for the purposes set out in the RFP Data Sheet. While attendance at a Proponents Meeting is not mandatory, Proponents are strongly encouraged to attend. A Proponent's failure to attend a Proponents Meeting is at the Proponent's sole risk and responsibility.

(2) Proponents may ask questions and seek clarifications at a Proponents Meeting. Notwithstanding that the Sponsors may give oral answers at a Proponents Meeting, those answers shall not be considered final unless issued in writing and expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7. Therefore, Proponents are strongly encouraged to submit these questions in accordance with RFP Section 3.2.2 for response in accordance with RFP Section 3.2.2.

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

3.4.2 Commercially Confidential Proponent Meetings

(1) The Sponsors may, in their sole discretion, convene commercially confidential meetings with individual Proponents (“**Commercially Confidential Meetings**”) which may include the Consultation Sessions described in Schedule 2 – Proponent Consultation Process to this RFP and additional Commercially Confidential Meetings between the Sponsors (and their representatives and Advisors) and individual Proponents (and their representatives and Advisors) to discuss other matters related to the RFP Process or the Proponents' Proposals.

(2) Whether the Sponsors intend to hold Commercially Confidential Meetings and the location of those meetings is set out in Schedule 2 – Proponent Consultation Process to this RFP and in the RFP Data Sheet. The approximate date and time of Commercially Confidential Meetings is described in Schedule 2 – Proponent Consultation Process to this RFP and, if applicable, set out in the Timetable. While attendance at Commercially Confidential Meetings by Proponents is not mandatory, Proponents are strongly encouraged to attend. A Proponent’s failure to attend a Commercially Confidential Meeting is at the Proponent’s sole risk and responsibility. Commercially Confidential Meetings may be held in-person or by videoconference. The Sponsors shall decide which option is applicable for each Commercially Confidential Meeting and shall communicate their decision to Proponents in advance of the relevant Commercially Confidential Meeting.

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

(4) No oral or written statement, consent, waiver, acceptance, approval or anything else said or done by the Sponsors or any of their respective Advisors, employees or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 – Proponent Consultation Process shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents, Proponent Team Members or their Advisors except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.7.

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

- (a) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 – Proponent Consultation Process is not and shall not be deemed or considered to be an indication of a preference by the Sponsors or the Government of Ontario or a rejection by the Sponsors or the Government of Ontario of anything said or done by the Proponent, Proponent Team Member or any of their respective Advisors or representatives;
- (b) any oral or written statement made by the Sponsors or any of their Advisors or representatives or by any stakeholder of the Project during any Commercially Confidential Meeting or otherwise pursuant to Schedule 2 – Proponent Consultation Process shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Contract, the Project or otherwise, except and only to the extent expressly confirmed in an Addendum issued 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 Process, the RFP Documents or the rules with respect to Commercially Confidential Meetings, including the Commercially Confidential Meetings themselves, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent, another Proponent's Proponent Team Member or their respective Advisors or representatives that was not received by the Proponent, its own Proponent Team Member(s) or any of their respective Advisors or representatives; and
 - (iii) agree that the Proponent, its Proponent Team Members and their respective Advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

3.5 Visiting the Site and the Existing Facilities

3.5.1 Scheduled Visits

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

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

(3) Any statement made by Infrastructure Ontario, the Client or any of their respective Advisors or representatives during any Scheduled Visit or any additional Site Visit (Non-Existing Facilities) or Existing Facilities Site Visit, if any, shall not and will not be relied upon in any way by the Proponent, Proponent Team Member or any of their respective Advisors or representatives for any purpose, including any purpose in connection with the RFP, the Contract, the Project or

otherwise, except and only to the extent expressly confirmed in an Addendum issued in accordance with RFP Section 3.7, provided that neither Infrastructure Ontario nor the Client shall be under any obligation to confirm any information by Addendum.

3.5.2 Additional Site Visits (Non-Existing Facilities)

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

(2) Proponents are not permitted non-scheduled Site Visit(s) (Non-Existing Facilities) save and except pursuant to the prior written arrangement with Sponsors for each access. The location and a brief description of that part of the Site to which this RFP Section 3.5.2 applies are set out in the RFP Data Sheet and are described fully in the Site Information and the Contract.

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

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

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

(5) Unless otherwise advised by the Sponsors, in their sole discretion, during each Site Visit (Non-Existing Facilities), Proponents shall be permitted to:

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

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

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

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

3.5.3 Additional Existing Facilities Visits

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

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

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

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

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

- (a) all Proponent and Proponent Team Member representatives upon arrival at each of the Existing Facilities shall report to the appropriate authority at the Existing Facilities, sign in as required by the Existing Facilities and receive and wear an identification badge;
- (b) all Proponent and Proponent Team Member representatives shall strictly obey all instructions from the Sponsors' representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
- (c) all Proponent and Proponent Team Member representatives shall, at all times, make reasonable efforts to avoid disturbing or infringing upon the privacy of any persons occupying or working in the Existing Facilities;
- (d) the Proponent and Proponent Team Member representatives shall visit only those specific areas of the Existing Facilities to which the Proponent has been granted access in the Sponsors' confirmation; and
- (e) the Proponent and Proponent Team Member representatives shall not take any photographs, recordings (video and/or sound) or measurements, perform any inspections or tests, or collect any data or samples without the prior written consent of the Sponsors, which may be granted, granted with conditions or refused, in the sole discretion of the Sponsors. If any such actions are permitted by the Sponsors, it may be completed by the Proponent and Proponent Team Member representatives only in the specific areas of the Existing Facilities for which such consent has been given. No photographs or recordings (video and/or sound) of hospital staff or patients shall be permitted.

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

3.6 Changes to Proponents and Proponent Team Members and Key Individuals

(1) Proponents shall not change their shareholders, Proponent Team Members, proposed subcontractors, Key Individuals, or other parties identified in the Proponents' Prequalification Submissions (the "**Identified Proponent Parties**") without the prior written consent of the Sponsors. Notwithstanding the foregoing, no consent from the Sponsors shall be required with respect to a change in a Proponent's shareholders where the person acquiring the ownership interest is not a Restricted Person and:

- (a) the Proponent is a company whose equity securities are listed on a recognized stock exchange; or

- (b) there is a change in a Proponent's shareholdings owned by an employee of such Proponent, unless such changes individually or in the aggregate determined since the date of the Prequalification Submission, would result in a Change of Control of the Proponent..

(2) Proponents shall not make any material change to the role or scope of work to be performed by any Prime Team Member without the prior written consent of the Sponsors.

(3) Without limiting the generality of the foregoing, Proponents are permitted to request a change in their Identified Proponent Parties or a material change to the role or scope of work to be performed by any Prime Team Member in accordance with this RFP Section 3.6.

(4) 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 or material change to the role or scope of work to be performed by any Prime Team Member, (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.

(5) If an Identified Proponent Party withdraws from the RFP Process in a manner that does not make it possible for the Proponent to deliver the request notice in advance of obtaining the Sponsors' consent, the Proponent shall notify the Sponsors of the withdrawal as soon as the Proponent becomes aware of the withdrawal and shall deliver a request notice to the Contact Person, requesting the Sponsors' consent to a Proposed Change in Identified Proponent Party, either by substituting or proceeding without any substitute of the withdrawn Identified Proponent Party, such request notice to be delivered no later than six (6) weeks after the occurrence of the date of withdrawal or twenty one (21) days before the Technical Submission Deadline, whichever is earlier.

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

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

- (c) attach and provide sufficient documentation to demonstrate to the satisfaction of the Sponsors, in their sole discretion, that the reconstituted Proponent Team or the reconstituted allocation of responsibilities of the Proponent Team, as applicable (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.

(7) In reviewing a request made in accordance with RFP Section 3.6(6), the Sponsors may, in their sole discretion and at any time, instruct the Proponent to deliver further documentation or additional information as may be reasonably requested by the Sponsors to assess any Proposed Change in Identified Proponent Party. When a request for further documentation or additional information is made by the Sponsors, the Proponent shall deliver such information and documentation as soon as possible and in any event no later than the deadlines set out in RFP Sections 3.6(4) or 3.6(5), as applicable. The Sponsors are under no obligation to consider any further documentation or additional information delivered after the applicable deadline.

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

(9) The Sponsors may, in their sole discretion, disqualify a Proponent and terminate a Proponent's continued involvement in the RFP Process or allow a Proponent to continue under such terms and conditions as the Sponsors may require, in their sole discretion, in the event of any of the following:

- (a) an actual change in any Identified Proponent Party or a material change to the role or scope of work to be performed by any Prime Team Member 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(5));

- (b) a Proposed Change in Identified Proponent Party is made after the deadlines set out in RFP Sections 3.6(4) or 3.6(5), as applicable; or
- (c) a change in circumstances occurs with respect to a Proponent after the Technical Submission Deadline that may materially adversely affect an Identified Proponent Party in a way which could impair the Proponent's or the Identified Proponent Party's ability to perform their respective obligations under the Contract.

(10) If, at any time prior to the Execution 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**") as a result of an acquisition of the Acquiree by one of the other Proponents or one of the other Proponent's Proponent Team Members (the "**Acquirer**"):

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

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

3.7 Addenda/Changes to the RFP Documents

(1) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Technical Submission Deadline (for matters relating to the Technical Submission) and prior to the Financial Submission Deadline (for all other matters). The Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors or the Sponsors' Advisors, employees or representatives, including, for clarity, the Contact Person, or any other person, shall amend the RFP Documents. The

approximate final date that the Sponsors will issue an Addendum in respect of the Contract is set out in the Timetable. The Sponsors may issue other Addenda at any time.

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

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

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

3.8 Freedom of Information, Confidentiality and Copyright Matters

3.8.1 Freedom of Information and Protection of Privacy Act

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

(2) Proponents are also advised that FIPPA does provide protection for confidential and proprietary business information. Proponents are strongly advised to consult their own legal Advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their Proposals.

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

3.8.2 Confidentiality Agreements

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

3.8.3 Confidential Information

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

(2) The Proponent agrees that all Confidential Information:

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

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

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

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

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

(6) The confidentiality obligations of the Proponent shall not apply to any information which falls within the following exceptions:

- (a) information that is lawfully in the public domain at the time of first disclosure to the Proponent, or which, after disclosure to the Proponent, becomes part of the public domain other than by a breach of the Proponent's confidentiality obligations or by any act or fault of the Proponent;
- (b) information which was in the Proponent's possession prior to its disclosure to the Proponent by the Sponsors, and provided that it was not acquired by the Proponent under an obligation of confidence; or
- (c) information which was lawfully obtained by the Proponent from a third party without restriction of disclosure, provided such third party was at the time of disclosure under no obligation of secrecy with respect to such information.

3.8.4 Copyright and Use of Information in Proposals

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

- (a) if the RFP Process is cancelled and a Break Fee is offered in accordance with RFP Section 10.3.2, upon payment of the Break Fee; or
- (b) if RFP Section 3.8.4(1)(a) does not apply, upon submission of the Proposal.

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

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

(4) The Proponent shall grant to each of, the Sponsors and His Majesty the King in right of Ontario a non-exclusive, perpetual, irrevocable, worldwide, fully paid and royalty free license (fully assignable without the consent of the Proponent and with the right to sub-license without the consent of the Proponent) to use the Proposal Information (the “**Proposal Information Licence**”). Without limiting the foregoing, the Proposal Information Licence shall include the right to modify the Proposal Information, and, where applicable, to use it, or any modified form of it, anywhere in the world. Under no circumstances shall the Proponent, except the Contractor (as defined in the Contract) in relation to this Project, be liable to the Sponsors, His Majesty the King in right of Ontario or to any other person or entity for any damages, losses, costs, expenses, claims or actions whatsoever arising directly or indirectly from the use of the Proposal Information pursuant to the Proposal Information Licence.

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

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

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

3.8.5 Digital and Data Directive

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

3.9 Conflict of Interest and Ineligible Persons

3.9.1 Conflict of Interest

(1) Proponents, Proponent Team Members (including Key Individuals) and each of their Advisors, shall disclose, in their Proposal Submission Forms and the Proponent Team Member Declaration (in respect of Proponent Team Members and Key Individuals), 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, Key Individual or any of their respective Advisors, prior to or following submission of its Proposal, discovers any perceived, potential or actual Conflict of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.

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

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

(5) Without limiting the generality of RFP Sections 3.9.1(4) or 3.9.1(6), the Sponsors may, in their sole discretion, require the Proponent, Proponent Team Member, Key Individual 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, Proponent Team Members or Key Individuals, 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, Key Individual, any Advisor to the Proponent or any of the employees of a Proponent, Proponent Team Member or Advisor to

the Proponent engaged in the development or oversight of development of the Proponent's Proposal (including for such employees in their personal capacities):

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

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

3.9.2 Ineligible Persons

(1) As a result of their involvement in the Project, the persons named as "Ineligible Persons" in the RFP Data Sheet, together with any Persons who formerly worked on behalf of either of the Sponsors and in the course of such work had knowledge of confidential information of strategic and/or material relevance to the RFP Process or to the Project that is not available to other Proponents and that could or could be seen to give the Proponent an unfair competitive advantage (collectively, "**Ineligible Persons**"), their employees, and any of their subcontractors, advisors, consultants or representatives 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, Key Individual 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 perceived, potential or actual Conflict of Interest and whether the impact of such perceived, potential or actual Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsors' decision by means of a consent letter setting out the nature of the consent and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person or its Affiliate is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsors shall add the Ineligible Person's Affiliate to the Ineligible Persons list by Addendum.

3.9.3 Conflict of Interest Screening List

(1) Proponents shall deliver to the Contact Person, no later than the deadline set out in the Timetable, the list of Identified Proponent Parties and other significant individuals having involvement in the preparation and/or oversight of the preparation of the Proposal in the form prescribed by Schedule 4A to this RFP, which list shall be used by the Sponsors in their assessment of the presence of an actual, potential or perceived Conflict of Interest involving any Proponent, Identified Proponent Party or any employee or Advisor of the Sponsors in respect of the Project.

3.10 **Proponent Costs**

(1) Each Proponent and its 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 Proposal;
- (b) attendance at any Proponents' Meeting, Commercially Confidential Meeting or any other meeting with the Sponsors;
- (c) due diligence and information gathering processes;

- (d) Scheduled Visits, Site Visits (Non-Existing Facilities) or Existing Facilities Site Visits;
- (e) preparation of responses to questions or requests for information from the Sponsors;
- (f) preparation of the Proponent's own RFIs during the clarification process; and
- (g) negotiations.

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

3.11 Insurance and Workers Compensation

3.11.1 Insurance Required during the RFP Process

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

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

Advisors and agents) while on or at the Site or on or at any other facilities or premises of the Sponsors.

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

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

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

3.11.2 Workplace Safety during the RFP Process

(1) As a condition of allowing access to the Site (including the Existing Facilities) or any other facilities or premises of the Sponsors, each of the Sponsors may, in its sole discretion, require 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 the Sponsors that the Proponent and its Proponent Team Members have employer's liability insurance in amounts and on terms and conditions acceptable to them.

3.11.3 Infrastructure Ontario Construction Insurance Program

(1) Infrastructure Ontario may determine that certain construction insurance to be provided under the Contract will be obtained under the Infrastructure Ontario Construction Insurance Program ("IOCIP"). If a Project has been designated by Infrastructure Ontario to proceed under IOCIP, a "User Guide" will be posted as Background Information. The User Guide includes the form of confidentiality agreement that must be entered into between a Proponent and the IOCIP Broker of Record and the forms of applications to be completed by a Proponent and submitted to the IOCIP Broker of Record for the construction insurance.

3.12 Contract Documents, Site, Site Conditions and related Background Information

(1) Without minimizing the importance of any other provision of this RFP, the Sponsors emphasize that it is critically important for the purposes of each Proponent's Proposal for the Proponent to, and that it is the Proponent's sole responsibility to, closely and carefully review and understand the provisions of the Contract Documents setting out the Contractor's

obligations and liabilities with regards to errors, inconsistencies or omissions in the Contract Documents, the Site, the Site conditions and the related Site information, including the provisions of paragraphs 1.1.3, 1.1.4, 1.1.11, 1.1.12 and 1.1.13 of the Contract.

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

- (a) by the applicable deadline set out in the RFP Data Sheet for the submission of RFIs, identify and bring to the attention of the Sponsors, and seek clarification from the Sponsors with respect to, any and all ambiguities, errors, inconsistencies, omissions and other issues identified by the Proponent with respect to the Site information and Drawings and Specifications provided by the Sponsors; and
- (b) prior to the Due Diligence Request Deadline, if the Proponent determines it is necessary or desirable for the purposes of its Proposal, provide one or more requests to the Sponsors for the Sponsors to conduct additional due diligence and to provide additional Background Information to the Proponents with respect to the Site or any issues with the Drawings and Specifications, including supplemental or new Technical Reports, which request may be granted or refused by the Sponsors, in their sole discretion, including if there is insufficient time before the Technical Submission Deadline for the Sponsors to conduct such due diligence and provide such additional Background Information to the Proponents.

3.13 Intentionally Deleted

SECTION 4 – PROPOSAL FORM AND CONTENT REQUIREMENTS AND SURETY CONSENT

4.1 Format and Content of the Proposal

(1) Proponents shall submit Proposals organized in accordance with and in the format set out in Schedules 3 to 6 and 9 to this RFP.

(2) Proponents shall submit Proposals as follows:

- (a) an initial submission, consisting of the following (collectively, the “**Technical Submission**”)
 - (i) Part A – Proposal Submission Documents (Technical Submission Deadline), including:
 - (A) the Proposal Submission Forms (Technical) (Schedule 4 to this RFP);

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

Proponents are cautioned to review the provisions of the Draft Contract with respect to pricing and compensation, and shall take all relevant provisions into account when completing the Contract Price and Proposal Cost Summary Form.

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

4.2 Surety’s Consent

4.2.1 Surety’s Consent

(1) Each Proponent must submit a surety’s consent in the form set out in RFP Schedule 7C (a “**Surety’s Consent**”, in order to secure the issuance of a performance bond and a labour and

material payment bond for the Project, as required by the Contract and in the form attached to Schedule 7C.

SECTION 5 – SUBMISSION, WITHDRAWAL AND MODIFICATION OF THE PROPOSAL

5.1 Submission of Proposal

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

(2) Proponents shall submit their Technical Submissions and their Financial Submissions using only the method set out in the RFP Data Sheet. It is the sole responsibility of each Proponent to ensure that each of the Technical Submission and the Financial Submission is received by Infrastructure Ontario prior to the Technical Submission Deadline and the Financial Submission Deadline, as applicable, and to ensure it receives an electronic time and date stamp receipt from the Electronic Submission and Evaluation System confirming its timely delivery. The Sponsors will not accept a Technical Submission or a Financial Submission delivered by electronic mail.

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

(4) If there is any difference whatsoever between the electronic copies of the Proposal in PDF format and native file format submitted through the Electronic Submission and Evaluation System, the copy of the Proposal in the PDF format submitted through the Electronic Submission and Evaluation System shall govern.

5.2 Withdrawal of Proposals

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

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

5.3 Amendment of Proposal

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

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

5.4 Proposal Irrevocability

(1) Except as provided in RFP Sections 5.5(1) and 5.5(3) and subject to RFP Section 5.5 and the Proponent's right to withdraw a Technical Submission before the Technical Submission Deadline, the Proposals shall be irrevocable and shall remain in effect and open for acceptance for 125 days after the Financial Submission Deadline (the "**Proposal Validity Period**") or until the Execution Date, whichever occurs first.

5.5 Extension of Proposal Validity Period

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

- (a) notwithstanding a Proponent's refusal to extend the Proposal Validity Period, that Proponent's Proposal shall continue to be valid in accordance with the original Proposal Validity Period; and
- (b) if the Sponsors determine that they will be unable to determine the Preferred Proponent or reach the Execution Date prior to the expiration of the original Proposal Validity Period, the Sponsors may discontinue the evaluation or consideration of a Proponent's Proposal or may discontinue negotiations with a Negotiations Proponent or finalization of a Contract with a Preferred Proponent if that Proponent has refused the Sponsors' request to extend the Proposal Validity Period and may continue the RFP Process with only those Proponents that have agreed to an extension of the Proposal Validity Period.

(2) In respect of the Preferred Proponent, the Sponsors shall be considered to have accepted the Preferred Proponent's Proposal prior to the expiration of the Proposal Validity Period if the Signing Parties and the Preferred Proponent reach the Execution Date prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable).

(3) Notwithstanding RFP Section 5.5(1), if, during the course of negotiations between a Negotiations Proponent and the Sponsors, the Negotiations Proponent resubmits prices to the Sponsors or agrees to revised terms and conditions of the Contract or the Negotiations Proponent's Proposal prior to the expiration of the Proposal Validity Period, that Negotiations Proponent is deemed to have agreed to a Proposal Validity Period for its amended Proposal ending the later of (i) 95 calendar days after the date of the Negotiation Proponent's submission to the Sponsors of the revised prices or revised terms and conditions, as applicable; and (ii) the expiry of the Negotiation Proponent's original Proposal Validity Period.

SECTION 6 – EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS

6.1 Evaluation Committee and Advisors

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

(2) If a member of the Evaluation Committee or, if applicable, an evaluation sub-committee becomes unable to continue serving on the Evaluation Committee or evaluation sub-committee before the completion of a step in the evaluation process, the evaluation comments, evaluation outcomes, weightings and scores of that individual, in respect of the uncompleted steps in the evaluation process only, shall be ignored. For clarity, if an Evaluation Committee or sub-committee member becomes unable to continue serving on the Evaluation Committee or a sub-committee after the full completion of a step in the evaluation process, the results of the completed steps of the evaluation process are unaffected and remain valid. Whether or not an Evaluation Committee or sub-committee member, in these circumstances, is replaced is in the sole discretion of the Sponsors.

6.2 Sponsors' Clarification and Verification of Proposals

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

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

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

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

6.3 Determination of Compliance

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

(1) any failure in a Proposal to conform with any requirement of the RFP Documents that, in the sole discretion of the Sponsors:

- (a) impedes, in any material way, the ability of the Sponsors to evaluate the Proposal; or
- (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 Contract.

(2) A requirement in either this RFP or in the Schedules to this RFP that a Proponent "must" or "shall" do anything is not intended to supersede the concepts of "comply", "compliance" or "Material Deviation" or any other portion of this RFP Section 6.3.

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

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

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

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

6.4 Non-Compliance Distinguished from Poor Quality

(1) A Proposal that contains a poor quality response and/or a failure to conform to a requirement of the RFP Documents shall not be deemed to be non-compliant and such poor quality response and/or failure to conform shall not be deemed to be a Material Deviation unless, and only unless, such poor quality response and/or failure to conform to the requirement of the RFP Documents, in the sole discretion of the Sponsors, meets the definition of a Material Deviation as set out in RFP Section 6.3(1).

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

(3) The quality of a Proposal, an assessment of which is made during the evaluation of, assignment of evaluation outcomes to, and weighting and scoring of that Proposal and which is separate and distinct from the assessment of the compliance of a Proposal, may be subject to one or more minimum acceptable submission scores in accordance with Part 4 – Proposal Format and Evaluation of Schedule 3 – Submission Requirements and Evaluation Criteria to this RFP.

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

(5) The submission of a compliant Proposal that contains a poor quality response and/or any failure by a Proponent to conform with any requirement of the RFP Documents which is not a Material Deviation does not derogate from the obligations of the Preferred Proponent pursuant to Section 9.2 of this RFP, or of the Contractor under the Contract to bring all aspects of

a Proponent's proposed construction into conformance with the requirements of the Contract, pursuant to its terms.

6.5 Steps in the Evaluation Process

6.5.1 Step 1 – Compliance of Technical Submissions

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

(2) Following this preliminary review of the Technical Submission, the Sponsors may, in their sole discretion, request and accept any information to rectify non-material errors or deficiencies in a Technical Submission. This includes, but is not limited to, requesting additional clarification, revision, or delivery of any part or whole of the specified deliverables for any reason whatsoever, including the discovery of any defect, missing information, or indiscernible information, including defects in electronic formats.

(3) If the Sponsors elect to allow rectification, the Proponent will be notified in writing of such non-material errors or deficiencies identified (the "**Rectification Notice**"). Proponents receiving a Rectification Notice are required to provide a response no later than the deadline set out in the Rectification Notice.

(4) The Sponsors and their Representatives will review the Proponent's response to the Rectification Notice, and determine whether the additional information rectifies the non-material errors or deficiencies identified. If the Sponsors determine that the Proponent's response to the Rectification Notice is satisfactory, the Proposal will proceed to Step 2 of the evaluation process.

(5) In the event that a Proponent does not respond to the Rectification Notice within the allotted time, or the Proponent's response to the Rectification Notice does not address or correct the deficiencies or errors, the Sponsors may, in their sole discretion and without liability, cost or penalty, either allow the Proposal to proceed to Step 2 of the evaluation process or disqualify the Proponent.

(6) Notwithstanding the terms of this Section, the Sponsors and their Representatives are under no obligation to issue a Rectification Notice to any Proponent if any non-material errors or defects are identified during Step 1 of the evaluation process. The Proponent is at all times solely responsible for the accuracy, consistency, and completeness of its Proposal.

(7) A Proponent's satisfactory response to a Rectification Notice does not constitute acceptance by the Sponsors of a Proposal or of a Technical Submission, and does not constitute a waiver of any of the Sponsors' rights under this RFP. All Proposals must still be evaluated further to the requirements set out in this RFP.

(8) The Rectification Notice process described in this Section is not intended to allow any Proponent to rectify any Material Deviation as defined in Section 6.3.

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

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

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

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

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

6.5.3 Step 3 – Review and Scoring of the Technical Submissions

(1) In Step 3 of the evaluation process, the Technical Submissions will be evaluated, assigned evaluation outcomes, weighted and scored in accordance with Parts 1 – Technical Submission Requirements and 2 – Proposal Format and Evaluation of Schedule 3 to this RFP.

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

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

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

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

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

6.5.5 Step 5 – Review and Scoring of the Financial Submissions

(1) In Step 5 of the evaluation process, the Financial Submissions will be evaluated and scored in accordance with Part 4 – Proposal Format and Evaluation of Schedule 3 to this RFP.

6.5.6 Step 6 – Establishing a Final Proposal Score

(1) For the purpose of the evaluation process, the weightings and scoring set out in Part 4 of Schedule 3 to this RFP will apply.

(2) In Step 6 of the evaluation process, upon receipt by the Evaluation Committee and acceptance of the results of the evaluation process and finalization of the scores of all Proponents' Proposals, the score for each Proposal will be tallied and finalized.

(3) The score established based on RFP Section 6.5.6 shall be the “**Final Proposal Score**”.

6.5.7 Step 7 – Ranking the Proponents

(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 Final Proposal Score determined in Step 6.

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

SECTION 7 – GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS

7.1.1 Sponsors' Discretion in Determining Compliance, Scoring and Ranking

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

- (a) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
- (b) whether a Proposal is compliant with the RFP Documents;
- (c) whether a failure to comply constitutes a Material Deviation;
- (d) whether Key Individuals who were not named in a Prequalification Submission are acceptable to the Sponsors;
- (e) the Final Proposal Score of a Proposal;
- (f) the rankings of the Proposals; and
- (g) whether a Proposal or a Proponent,
 - (i) is disqualified; or
 - (ii) will cease to be considered in the evaluation process.

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

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

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

(4) Pursuant to the page limit restrictions applicable to any portion of a Proposal as described in this RFP, the Sponsors shall, without discretion, not review, assign an evaluation outcome or weighting to or score any pages of a Proposal that exceed the maximum number of pages specified for the applicable portion of the Proposal.

7.1.2 Disqualification

(1) The Sponsors may, in their sole discretion, disqualify a Proponent, a Proponent Team Member or a Proposal or reverse their decision to make an award (even if the award has already been made to a Preferred Proponent under this RFP) at any time prior to the Execution Date, if,

- (a) the Proposal is determined to be non-compliant pursuant to RFP Section 6.3;
- (b) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its Proposal or interview;
- (c) the Proponent contravenes RFP Section 3.3.2 or RFP Section 3.3.3;
- (d) the Proponent fails to comply with Applicable Law;
- (e) the Proponent, any Proponent Team Member, their identified subcontractors, or any of their directors, officers, employees or Affiliates, or any Key Individuals of a Proponent, 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, or any Key Individuals of a Proponent, are a Restricted Person or a Restricted Person as defined in subparagraph (a)(i) of the definition of Restricted Person has, directly or indirectly, an Economic Interest in any of them;
- (g) the Proposal, including any officer's certificate or any form attached to the Proposal, contains false or misleading information or a misrepresentation;
- (h) the Proponent or any Proponent Team Member fails to disclose any information (including in any officer's certificate or any other form attached to the Proposal in connection with this RFP) that would materially adversely affect the Sponsors' evaluation of the Proposal;
- (i) the Proposal, in the opinion of the Sponsors, reveals a material Conflict of Interest as described in RFP Section 3.9 and the Proponent,
 - (i) does not receive a waiver from the Sponsors in accordance with RFP Section 3.9.1(6) or does not receive a consent in accordance with RFP Section 3.9.2(4), as applicable; or
 - (ii) fails to substitute the person or entity giving rise to the Conflict of Interest in accordance with RFP Section 3.9.1(5);
- (j) in the 12 months prior to the Financial Submission Deadline, the Sponsors became aware that the Proponent, any Proponent Team Member or any Key Individual failed to disclose an actual Conflict of Interest in any past or current procurement issued by either Sponsor, unless the Proponent has demonstrated to the satisfaction of the Sponsors that the Proponent has implemented measures to prevent future false or omitted disclosure of actual Conflicts of Interest;

- (k) in the opinion of the Sponsors, acting reasonably, the Proponent or a Proponent Team Member or any of their respective Advisors, employees or representatives, or any Key Individuals, directly or indirectly colluded with one or more other Proponents or its Proponent Team Members or any of their respective Advisors, employees or representatives in the preparation or submission of a Proponent's Proposal or otherwise contravened RFP Section 3.3.4;
- (l) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor;
- (m) the Proponent or any Proponent Team Member or Key Individual has been convicted of an offence in connection with any services rendered to the Sponsors or any Ministry, agency, Board or Commission of the Government of Ontario;
- (n) there are any convictions related to inappropriate bidding practices or unethical behaviour by a Proponent or a Proponent Team Member or any of their Affiliates or Key Individuals in relation to a public or broader public sector tender or procurement in any Canadian jurisdiction; or
- (o) the Proponent or any Proponent Team Member or any Key Individual has an economic or other interest or relationship that:
 - (i) is, or could reasonably be perceived to be, contrary to the objectives of the Project; or
 - (ii) could potentially compromise the Sponsors' reputation or integrity or the Sponsors' procurement process, so as to affect public confidence in that process,

whether or not such interest creates a Conflict of Interest.

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

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

- (1) Based on the Final Proposal Scores, the Sponsors may, in their sole discretion, at any time prior to the expiration of the Proposal Validity Period:
 - (a) identify the highest ranked Proponent as the Preferred Proponent and either negotiate with such Proponent or accept such Proponent's Proposal as submitted;

- (b) identify the two highest ranking Proponents as the first negotiations proponent (the “**First Negotiations Proponent**”) (highest ranked) and the second negotiations proponent (the “**Second Negotiations Proponent**”) (second highest ranked) (collectively, the “**Negotiations Proponents**”) and enter into negotiations with the First Negotiations Proponent and, failing successful negotiations, enter into negotiations with the Second Negotiations Proponent and identify the Proponent with whom the Sponsors conclude successful negotiations as the Preferred Proponent; or
- (c) enter into separate and distinct but contemporaneous negotiations with the First Negotiations Proponent and the Second Negotiations Proponent and identify a Preferred Proponent as a result of those negotiations.

(2) The Sponsors may use the negotiations process to negotiate any aspect of a Negotiations Proponent’s or Preferred Proponent’s Proposal or the Contract, or both, including, for greater clarity:

- (a) any amendments to the Contract that are reasonably required to revise the scope of the Project in the event that all Proposal prices have exceeded the Sponsors’ Project budget;
- (b) any amendments to the Contract that are reasonably required to ensure that a Negotiations Proponent’s Proposed Construction Schedule meets the applicable requirements set out in the Contract, including GC 3.4 – Construction Schedule of the Contract; and/or
- (c) any amendments to the Contract that are reasonably required to satisfy the Sponsors with respect to the current status of a Negotiations Proponents’ health and safety certifications, provided in accordance with RFP Schedule 3 – Part 1.

(3) Except as provided in RFP Section 5.5(3), notwithstanding any negotiations between the Sponsors and a Negotiations Proponent, the Proposals of all Proponents shall remain valid and irrevocable until the expiration of the Proposal Validity Period or until the Execution Date, in accordance with RFP Section 5.4(1).

(4) If, in accordance with this RFP Section 8.1(1), a Proponent and the Sponsors negotiate revisions to the Contract, the Sponsors and the Preferred Proponent shall develop a revised Contract and, for the purposes of RFP Section 9, the revised Contract shall be the “**Contract**”.

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

SECTION 9 – PREFERRED PROPONENT

9.1 Identification of the Preferred Proponent and the Letter of Credit

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

(2) No later than three (3) Business Days after a Proponent's receipt of a notice from the Contact Person that the Proponent is the Preferred Proponent, the Preferred Proponent shall provide an irrevocable standby letter of credit (the "**Letter of Credit**") in the amount specified in the RFP Data Sheet and in the form attached as Schedule 7A to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5). The Preferred Proponent may, with the prior written consent of the Sponsors, which consent may be withheld in the sole discretion of the Sponsors, provide multiple irrevocable standby letters of credit from Proponent Team Members as approved and confirmed by the Sponsors (each a "**Letter of Credit Provider**") totalling the amount specified in the RFP Data Sheet and in the form attached as Schedule 7A to this RFP to secure the Preferred Proponent's obligations in accordance with RFP Section 9.1(5).

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

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

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

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

- (a) there is a breach of the Preferred Proponent obligations set out in RFP Section 9.2 by the Preferred Proponent;
- (b) Execution of the Contract has not occurred (for reasons other than the failure of the Signing Parties to execute the Contract in accordance with its terms),
 - (i) on or before the Execution Target Date; or

(ii) if the Execution Target Date has passed and the Sponsors have given their consent, on or before the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable); or

(c) the Preferred Proponent has notified the Sponsors in writing that it wishes to cease all discussions with the Sponsors relating to the Project.

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

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

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

9.2 Preferred Proponent Obligations

- (1) The Preferred Proponent shall,
 - (a) provide the Sponsors with drafts of:

- (i) each document required by the terms of the Contract to be delivered on or prior to the Execution Date; and
- (ii) legal opinions and other documents reasonably required by the Sponsors for closing,

at least 30 days prior to the Execution Target Date;

- (b) execute the Contract,
 - (i) prior to the Execution Target Date; or
 - (ii) if the Execution Target Date has passed and the Sponsors have given their consent, prior to the expiration of the Proposal Validity Period (or the extended Proposal Validity Period, if applicable)

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

- (c) execute the Contract, subject only to revision in respect of the following:
 - (i) minor changes, additions and modifications necessary to create a legally complete and binding agreement;
 - (ii) changes, additions and modifications to those provisions which require,
 - (A) the insertion or addition of information relating to the Preferred Proponent's corporate and funding structure which are not inconsistent with the principles set out in the Contract;
 - (B) the insertion or addition of information or the modification of provisions of the Contract required in order to reflect accurately the nature of the Preferred Proponent's relationships with its principal subcontractors; or
 - (C) the revision of provisions in the Contract to more accurately reflect the result of negotiations in accordance with RFP Section 8.1;
 - (iii) changes, additions and modifications required in order to complete (based on the Proposal) any provision of the Contract (where contemplated in or required under the terms of the RFP Documents) or to complete any Schedules to the Contract; and

- (iv) changes, additions and modifications to those parts of the Contract which are indicated in the Contract as being subject to completion or finalization,

provided that, in each case, the changes, additions or modifications identified in RFP Section 9.2(1)(c) are consistent with the principles set out in the Contract, are otherwise acceptable to the Sponsors, acting reasonably, and are consistent with RFP Section 9.2(3);

- (d) maintain its prices in accordance with the terms and conditions of this RFP, subject only to revisions to the price explicitly agreed to by the Sponsors; and
- (e) if applicable, no later than five Business Days following receipt of notice from the Sponsors that it is the Preferred Proponent, submit to the Sponsors for their review the updated Proposed Construction Schedule that reflects the outcome of the negotiations conducted pursuant to RFP Section 8.1(2)(b).

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

(3) The Preferred Proponent acknowledges and agrees that:

- (a) further to RFP Section 5.4(1), the Sponsors, in their sole discretion, may incorporate certain parts of its Proposal into the Contract as the Contractor Proposal Extracts. Notwithstanding the foregoing, the Sponsors shall act reasonably in incorporating any specific part of the Proposal into the Contractor Proposal Extracts where the Preferred Proponent demonstrates to the Sponsors that incorporating such part of the Proposal into the Contractor Proposal Extracts ("Specific Proposal Part") without also incorporating a related specific part(s) of the Proposal into the Contractor Proposal Extracts will (i) materially adversely change the intent, or materially prejudice the interpretation, of the Specific Proposal Part or the Contract, as contemplated by the Proposal; or (ii) otherwise materially adversely affect the performance of the Work by the Contractor under the Contract; and
- (b) save and except for any Contractor Proposal Extracts, on the Execution Date, the RFP Documents and its Proposal will be superseded entirely by

the Contract and rendered null and void in accordance with Section 1.1(d) of the Contract.

9.3 The Sponsors Authorization and Approvals

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

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

10.1 General Rights of the Sponsors

- (1) The Sponsors may, in their sole discretion:
 - (a) reject any or all of the Proposals;
 - (b) reject the Key Individuals proposed in a Proposal and, if not satisfactorily substituted, reject the Proposal;
 - (c) accept any Proposal;
 - (d) if only one Proposal is received, elect to accept or reject it or enter into negotiations with the Proponent;
 - (e) elect to cancel the RFP Process at any time before the end of the RFP Process, including after the identification of a Preferred Proponent but before the Execution Date;
 - (f) alter the Timetable, the RFP Process or any other aspect of this RFP; and
 - (g) cancel the RFP Process and subsequently advertise or call for new submissions for the same or different subject matter as these RFP Documents with the same or different participants.

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

(3) Each Construction Prime Team Member is required to provide an accounting firm letter for itself and, if it is a joint venture, for each joint venture party, in the form attached as Schedule 5B- Accounting Firm Letter, from a professional accounting and advisory firm that is reputable in the applicable jurisdiction with expertise in forensic reviews dated no earlier than two years prior to the date of the issuance of the RFP.

(4) Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the RFP Process, the Sponsors may, in their sole discretion, require at any time, including any time after a Proponent has submitted its Proposal, that any Proponent Team Member of any Proponent provide or resubmit a certificate of an officer from such Proponent Team Member in the form attached as Schedule 5A – Certificate of Officer to this RFP, or may require any Construction Prime Team Member of any Proponent to provide or resubmit an accounting firm letter in the form attached as Schedule 5B – Accounting Firm Letter for itself and, if it is a joint venture, for each joint venture party.

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

- (a) impose at any time on all Proponents, any Proponent Team Members or Key Individuals 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 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 require evidence of compliance by the Proponent, all Proponent Team Members or Key Individuals with such policies, processes and controls.

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

- (a) fails to comply with any requirement prescribed by the Sponsors pursuant to RFP Section 10.1(2) or RFP Section 10.1(5); or
- (b) complies with Sponsors' requirement as prescribed in accordance with RFP Section 10.1(2) or RFP Section 10.1(5), but the Sponsors determine that any Proponent, Proponent Team Member or Key Individual has or may have engaged in inappropriate bidding practices or unethical behaviour,

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

10.2 Special Circumstances

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

- (a) take any action in accordance with RFP Section 10.1;
 - (b) carry out a process whereby all Proponents are directed to correct the Material Deviations in their Proposals for re-submission, without a change in their Contract Prices (as set out in the Contract Price and Proposal Cost Summary Form) or their Proposed Construction Schedule; or
 - (c) enter into negotiations with any one of the Proponents to attempt to finalize an agreement.
- (2) If the Sponsors receive,
- (a) one Proposal and that Proposal is compliant; or
 - (b) more than one Proposal, but only one compliant Proposal,
- the Sponsors may, in their sole discretion:
- (c) take any action in accordance with RFP Section 10.1(1); or
 - (d) cancel the RFP Process and subsequently enter into negotiations with the Proponent that submitted a compliant Proposal.
- (3) The Sponsors, in their sole discretion, may waive a Material Deviation in a Proposal and, therefore, waive a material failure to comply with the requirements of the RFP Documents. The Sponsors may, in their sole discretion, decline to disqualify a non-compliant Proposal.
- (4) If, at any time prior to the Technical Submission Deadline, any Proponent withdraws or is disqualified from the RFP Process, the Sponsors may, in their sole discretion, invite the next highest-ranked Reserve Prequalified Party to participate in the RFP Process in place of the withdrawn or disqualified Proponent. Upon the Reserve Prequalified Party's written acceptance of such invitation, the Reserve Prequalified Party shall become a Prequalified Party and a Proponent under this RFP.

10.3 Sponsors' Liability for Proponent's Costs

10.3.1 General

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

10.3.2 Break Fee

(1) Any Break Fee that is offered by the Sponsors for the Project shall be set out in the RFP Data Sheet and, subject to RFP Section 10.3.2(4), shall only be paid by the Sponsors when the Sponsors have been satisfied that:

- (a) the Proponent has demonstrated that it has been an active participant throughout the RFP Process;
- (b) the Proponent has provided substantiation of its active participation in the RFP Process as requested by the Sponsors; and
- (c) any other requirements in respect of the Break Fee set out in the RFP Data Sheet have been satisfied.

(2) The amount of the Break Fee payable to each eligible Proponent is set out in the RFP Data Sheet. At any time following the cancellation of the RFP Process, and subject to the Sponsors obtaining any necessary approvals, including from the Province, the Sponsors in their sole discretion may increase the amount of the Break Fee.

(3) Payment of a Break Fee shall represent full and final satisfaction of any obligation or liability of the Sponsors and the Government of Ontario to the Proponent and Proponent Team Members in connection with this RFP, and the Sponsors' obligation to pay the Break Fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the Sponsors, from the Proponent and Proponent Team Members to that effect.

(4) Each Proponent acknowledges and agrees that the obligation for the Sponsors to pay a Break Fee pursuant to this RFP is conditional on and subject to the Sponsors obtaining any necessary approvals in respect of making such payment, including from the Province.

10.4 Applicable Law, Attornment and Limit on Liability

- (1) This RFP shall be governed and construed in accordance with Applicable Law.
- (2) The Proponent agrees that,
 - (a) any action or proceeding relating to this RFP Process shall be brought in any court of competent jurisdiction in the Province of Ontario and for that purpose the Proponent irrevocably and unconditionally attorns and submits to the jurisdiction of that Ontario court;
 - (b) it irrevocably waives any right to and shall not oppose any Ontario action or proceeding relating to this RFP Process on any jurisdictional basis, including forum non conveniens; and
 - (c) it shall not oppose the enforcement against it, in any other jurisdiction, of any judgement or order duly obtained from an Ontario court as contemplated by this RFP Section 10.4.

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

- (a) the Proposal preparation costs that the Proponent seeking damages from the Sponsors can demonstrate; and
- (b) \$300,000 or the Break Fee, if applicable, whichever is greater.

10.5 Licenses, Permits, etc.

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

10.6 Power of Legislative Assembly

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

SECTION 11 – NOTIFICATION AND DEBRIEFING

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

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

SECTION 12 – DEFINITIONS

12.1 General

(1) Unless otherwise defined in this RFP Section 12, capitalized terms and expressions used in this RFP have the meaning given to them in the Contract. In this RFP, the singular shall

include the plural and the plural shall include the singular, except where the context otherwise requires.

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

(3) All references in this RFP to the Sponsors' or Infrastructure Ontario's "discretion" or "sole discretion" means in the sole and absolute discretion of the party exercising the discretion.

12.2 RFP Definitions

Whenever used in the RFP:

- (1) "Acquiree" is defined in RFP Section 3.6(10);
- (2) "Acquirer" is defined in RFP Section 3.6(10);
- (3) "Addendum" means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7;
- (4) "Ad Hoc Meetings" is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (5) "Advisor" means any person or firm retained to provide professional advice to any one of the Sponsors, a Proponent or a Proponent Team Member, as applicable;
- (6) "Affiliate" means an "affiliate" as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto;
- (7) "Alternative Price" is a price requested by the Sponsors, or proposed by a Proponent, for meeting an RFP requirement in an alternative manner or method that may affect the Contract Price;
- (8) "Alternative Price Submission" is defined in Part 3 of Schedule 3 of this RFP;
- (9) "Alternative Price Submission Form" is the form attached as Table 1 to Appendix 1 of Part 3 of Schedule 3 to this RFP.
- (10) "Background Information" means various types of information provided by the Sponsors and is defined in RFP Section 2.4(1)(b);
- (11) "Break Fee" means an amount to compensate a Proponent for some of the costs the Proponent had incurred in developing and submitting a Proposal in the event that the RFP Process is cancelled, as determined by the Sponsors in accordance with RFP Section 10.3.2;

- (12) “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;
- (13) “Change in Control” means, with respect to a person:
- (a) any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power or authority, through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person;
- (14) “Client” is defined in RFP Section 1.1(1);
- (15) “Commercially Confidential Meetings” is defined in RFP Section 3.4.2(1);
- (16) “Commercially Confidential RFIs” is defined in RFP Section 3.2.2(1)(a)(ii);
- (17) “Confidential Information” is defined in RFP Section 3.8.3(1);
- (18) “Conflict of Interest” is defined in RFP Section 3.9.1(7);
- (19) “Construction Documents Project Manual” refers to the document titled as such and posted to the Data Room, which Construction Documents Project Manual contains the Drawings and Specifications.
- (20) “Construction Prime Team Member” is defined in the RFQ;
- (21) “Consultation Sessions” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (22) “Contact Person” is defined in RFP Section 3.2.1;
- (23) “Contract” means those documents listed as the “Contract” in the RFP Data Sheet;
- (24) “Contract A” is defined in RFP Section 1.1(3);

(25) “Contractor” is the Preferred Proponent that has executed the Contract with the Owner;

(26) “Data Room” is defined in RFP Section 2.4(1);

(27) “Due Diligence Request Deadline” means the date that is 40 Business Days prior to the last date for the Sponsors to issue Background Information;

(28) “Economic Interest” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.

(29) “Electronic Submission and Evaluation System” means the electronic tendering software named AWARD® by Commerce Decisions®;

(30) “Evaluation Committee” is defined in RFP Section 6.1;

(31) “Execution Date” means the date the Contract is signed by the Preferred Proponent and the Signing Parties;

(32) “Execution Target Date” means the date set out as the Execution Target Date in the Timetable;

(33) “Existing Facilities” are those facilities, if any, listed as Existing Facilities in the RFP Data Sheet;

(34) “Existing Facilities Site Visits” is defined in RFP Section 3.5.1(1);

(35) “Final Proposal Score” is defined in RFP Section 6.5.6(3);

(36) “Financial RFI” is defined in RFP Section 3.2.2(1)(a)(iii);

(37) “Financial Submission” is defined in RFP Section 4.1(2)(b);

(38) “Financial Submission Deadline” is defined in RFP Section 3.1(1);

(39) “FIPPA” is defined in RFP Section 3.8.1(1);

(40) “First Negotiations Proponent” is defined in RFP Section 8.1(1)(b);

(41) “General RFIs” is defined in RFP Section 3.2.2(1)(a)(i);

(42) “Government of Ontario” means His Majesty the King in right of the Province of Ontario and any and all ministries, agencies, boards, commissions and/or corporations thereof;

- (43) “Contract Price and Proposal Cost Summary Form” means the Contract Price and Proposal Cost Summary form submitted by a Proponent as part of its Proposal in the form attached as Schedule 6 – Contract Price and Proposal Cost Summary Form to this RFP;
- (44) “Identified Proponent Parties” is defined in RFP Section 3.6(1);
- (45) “includes” and “including” means “includes without limitation” and “including without limitation” respectively;
- (46) “Ineligible Person’s Affiliate” is defined in RFP Section 3.9.2(1);
- (47) “Ineligible Persons” is defined in RFP Section 3.9.2(1);
- (48) “Infrastructure Ontario” is defined in RFP Section 1.1(1);
- (49) “IO” is defined in RFP Section 1.1(1);
- (50) “Investment Canada Act” means the *Investment Canada Act*, R.S.C. 1985, c.28 (1st Supp.), and regulations enacted thereunder, all as amended from time to time;
- (51) “IOCIP” is defined in RFP Section 3.11.3(1);
- (52) “IOCIP Broker of Record” means Aon Reed Stenhouse Inc.;
- (53) “Key Individuals” means those individuals identified in the Proponent’s Prequalification Submission as key individuals;
- (54) “Letter of Credit” is defined in RFP Section 9.1(2);
- (55) “Letter of Credit Provider” is defined in RFP Section 9.1(2);
- (56) “Material Deviation” is defined in RFP Section 6.3(1);
- (57) “Ministry” is defined in the RFP Data Sheet;
- (58) “MOI” is defined in RFP Section 1.1(5);
- (59) “Negotiations Proponents” is defined in RFP Section 8.1(1)(b);
- (60) “Owner” is defined in RFP Section 1.1(1);
- (61) “person” means an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, government authority, unincorporated body of persons or association and any other entity having legal capacity, and also includes the heirs, beneficiaries, executors, administrators or other legal representatives of any of the foregoing in such capacity;
- (62) “Preferred Proponent” is defined in RFP Section 1.1(2);

- (63) “Prequalification Stage” is defined in RFP Section 1.3(1)(a);
- (64) “Prequalification Submission” is defined in RFP Section 1.2(1);
- (65) “Prequalified Parties” is defined in RFP Section 1.2(1);
- (66) “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 any such person, any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to a Proponent becoming a Negotiations Proponent or the Preferred Proponent; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to a Proponent’s Proposal;provided that this definition shall not apply to a Proponent, Proponent Team Member or Key Individual (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, any Proponent Team Members, any Key Individual or any of their Affiliates, or on such person’s behalf or to such person’s knowledge, to the Sponsors or any public body (or anyone employed by or acting on their behalf), or to any family member of any 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, any Proponent Team Member, any of their Affiliates (or anyone employed by or acting on their behalf) or any Key Individual 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;
- (67) “Project” is defined in RFP Section 1.1(5);

- (68) “Proponent” is defined in RFP Section 1.1(2);
- (69) “Proponent Consultation Process” is defined in Schedule 2 – Proponent Consultation Process to this RFP;
- (70) “Proponent Representative” is defined in RFP Section 1.2(2);
- (71) “Proponent Team Members” means all members of a Proponent team other than Key Individuals that were identified in the RFQ process and were prequalified as a Proponent team to submit a Proposal in this RFP Process;
- (72) “Proponents Meeting” is defined in RFP Section 3.4.1(1);
- (73) “Proposal” is defined in RFP Section 1.1(2);
- (74) “Proposal Information” is defined in RFP Section 3.8.4(5);
- (75) “Proposal Information Licence” is defined in RFP Section 3.8.4(4);
- (76) “Proposal Submission Deadline” is the date identified as the “Proposal Submission Deadline” in the RFP Data Sheet;
- (77) “Proposal Submission Form (Financial)” means the submission form submitted by a Proponent as part of its Proposal in the form attached as Part B – Proposal Submission Form (Financial) to Schedule 4 – Proposal Submission Forms to this RFP;
- (78) “Proposal Submission Form (Technical)” means the submission form submitted by a Proponent as part of its Proposal in the form attached as Part A – Proposal Submission Form (Technical) to Schedule 4 – Proposal Submission Forms to this RFP;
- (79) “Proposal Submission Forms” means, collectively the Proposal Submission Form (Financial) and the Proposal Submission Form (Technical);
- (80) “Proposal Validity Period” is defined in RFP Section 5.4(1);
- (81) “Proposed Change in Identified Proponent Party” is defined in RFP Section 3.6(4);
- (82) “Proposed Construction Schedule” means the proposed construction schedule submitted pursuant to Section 1.0(e)(ii) of Appendix 1 to Schedule 2 of the RFP;
- (83) “Rectification Notice” is defined in RFP Section 6.5.1(3);
- (84) “Reserve Prequalified Party” means an Applicant (as defined in the RFQ) who has been identified as a Reserve Prequalified Party pursuant to the RFQ;
- (85) “Restricted Person” means any person who, or any member of a group of persons acting together, any one of which:

- (a) (i) is subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
- (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (c) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which the Sponsors consider unacceptable in their sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by the Sponsors in their sole discretion);
- (d) in the case of an individual, (i) he or she has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder, whether or not such person received a custodial sentence; or (ii) he or she has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act (Ontario)* or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
- (e) in the case of a person other than an individual, (i) it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act (Ontario)* or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “**Restricted Person**” is made hereunder;
- (f) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;

- (g) is subject to a material claim of the Sponsors or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “Restricted Person” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in the Sponsors’ view, be reasonably likely materially to affect the ability of the Proponent to perform its obligations under the Contract, if it were to become the successful Proponent under the RFP Process; or
- (h) has a material interest in the production of tobacco products;
- (86) “RFI” is defined in RFP Section 3.2.2(1);
- (87) “RFP” is defined in RFP Section 1.1(1);
- (88) “RFP Data Sheet” means Schedule 1 to this RFP;
- (89) “RFP Documents” is defined in RFP Section 2.1;
- (90) “RFP Process” is defined in RFP Section 1.1(3);
- (91) “RFQ” is defined in RFP Section 1.2(1);
- (92) “Scheduled Visits” is defined in RFP Section 3.5.1(1);
- (93) “Second Negotiations Proponent” is defined in RFP Section 8.1(1)(b);
- (94) “Separate Price” is a price requested by the Sponsors for adding scope or functionality that may affect the Contract Price;
- (95) “Separate Price Submission” is defined in Part 3 of Schedule 3 of this RFP;
- (96) “Separate Price Submission Form” is the form attached as Table 2 to Appendix 1 of Part 3 of Schedule 3 to this RFP;
- (97) “Signing Parties” is defined in RFP Section 1.1(6);
- (98) “Site” has the meaning given to “Place of the Work” in the Contract;
- (99) “Site Visits (Non-Existing Facilities)” is defined in RFP Section 3.5.1(1);
- (100) “Sponsors” is defined in RFP Section 1.1(1) and means Infrastructure Ontario and the Client;
- (101) “Submission” is defined in Part 4 of Schedule 3 to this RFP;
- (102) “Submission Requirements” means all of the submission requirements set out in this RFP;

- (103) “Surety’s Consent” is defined in RFP Section 4.2.1(1);
- (104) “Technical Submission” is defined in RFP Section 4.1(2)(a);
- (105) “Technical Submission Deadline” is defined in RFP Section 3.1(1);
- (106) “Technical Submission Elements” is defined in Section 3.1(a)(i) of Part 1 of Schedule 3 to this RFP;
- (107) “Technical Submission Information” means the component of the Proposal submitted in response to the requirements set out in Part 1 of Schedule 3 to the RFP; and
- (108) “Timetable” is defined in RFP Section 3.1(1).