



# LCBO

## **Request for Proposals**

**in connection with  
the Disposition of the  
LCBO Head Office Lands and  
Provision of the New LCBO Facilities**

**RFP No. 15-073P**

**(RFP Version 4.0)**

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## **REQUEST FOR PROPOSALS**

### **SECTION 1 - INTRODUCTION**

#### **1.1 General**

(a) This Request for Proposals (“**RFP**”) is issued by the Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**” or “**IO**”) for the purposes of selecting a purchaser for the transaction (the “**Transaction**”), a brief description of which is set out in Appendix A to Schedule 1 of this RFP. Infrastructure Ontario is issuing this RFP on behalf of the Liquor Control Board of Ontario (referred to hereinafter as the “**LCBO**”). Where a reference to “**Sponsors**” appears in this RFP, the term refers to IO and the LCBO collectively. The RFP number is set out in the RFP Data Sheet.

(b) In this RFP, entities that submit documents in response to RFP Stage 1 are referred to as “**RFP Stage 1 Proponents**” and their submissions are referred to as “**RFP Stage 1 Proposals**”. The entities that are selected by the Sponsors in RFP Stage 1 to proceed to RFP Stage 2 are referred to as the “**RFP Stage 2 Proponents**” and their submissions are referred to as “**RFP Stage 2 Proposals**”. The entity(ies) selected by the Sponsors in RFP Stage 2 to enter into the Negotiations Protocol Agreement and proceed to the negotiations process (the “**Negotiations Process**”) are referred to as the “**Negotiations Proponent(s)**”. The Negotiations Proponent selected by the Sponsors to enter into the Transaction Agreements is referred to as the “**Purchaser**”. For clarity, the term “**Proponent**” will be used to refer to any of the RFP Stage 1 Proponents, RFP Stage 2 Proponents, Negotiations Proponent(s), and Purchaser(s), as the context requires.

(c) Proponents are required to submit an RFP Stage 1 Proposal for all of the LCBO Lands together with the TPLC Rail Spur Lands owned by the City of Toronto’s Economic Development Corporation operating as Toronto Port Lands Company’s lands (“**TPLC**”) (collectively, the “**Assembled Lands**”).

(d) Infrastructure Ontario will manage the RFP Process on behalf of the Sponsors and shall be the single point of contact for Proponents on behalf of the Sponsors during the RFP Process. During the RFP Process, Proponents shall contact Infrastructure Ontario only through the contact person (the “**Contact Person**”) set out in the RFP Data Sheet.

(e) While Infrastructure Ontario will manage the RFP Process, the Purchaser, subject to the requirements and conditions of the RFP Documents, would actually enter into the Transaction Agreements 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 Transaction Agreements in the RFP Data Sheet, neither Infrastructure Ontario nor the Government of Ontario will be parties to the Transaction Agreements.

#### **1.2 Overview of the Stages of the RFP Process, Negotiations, and Transaction Implementation**

(a) The Sponsors will carry out the RFP Process (i.e. RFP Stage 1 and RFP Stage 2, collectively referred to as the “**RFP Process**”), negotiations, and implementation of the Transaction in accordance with the following:

(1) RFP Stage 1

RFP Stage 1 is the first stage in the RFP Process. It is intended to identify RFP Stage 2 Proponents that are eligible to participate in RFP Stage 2. Subject to RFP Section 5.4, Proponents are only permitted to submit one Proposal.

(2) RFP Stage 2

RFP Stage 2 is the stage of the RFP Process that follows RFP Stage 1 for the purpose of identifying a Negotiations Proponent from the shortlisted RFP Stage 1 Proponents. The Negotiations Proponent is determined by obtaining the highest Final Proposal Score at the conclusion of evaluations in RFP Stage 2. The RFP Process ends when the Negotiations Proponent is identified.

(3) Negotiations Process

The Negotiations Process commences once the Negotiations Proponent is identified and the Negotiations Proponent and the LCBO enter into the Negotiations Protocol Agreement. The purpose of the Negotiations Process is to negotiate certain aspects of the Transaction Agreements to arrive at mutually agreeable terms and conditions and for the Negotiations Proponent to complete the remainder of any physical and environmental due diligence, all within the period of time stipulated in the Negotiations Protocol Agreement (the “**Negotiations Period**”). If negotiations are successful, the Negotiations Proponent is identified as the Purchaser and the Transaction Agreements, as applicable, are executed.

Pursuant to RFP Section 6.3(6), if negotiations with the Negotiations Proponent fail, the LCBO may, in its sole discretion, invite the RFP Stage 2 Proponent whose total score is the next highest ranking from the RFP Process to participate in the Negotiations Process and enter into the Negotiations Protocol Agreement. The original Negotiations Proponent is thereafter eliminated from further negotiations with the LCBO, and the Negotiations Protocol Agreement with that Proponent will be terminated in accordance with its terms and conditions. The Negotiations Process may be repeated until a Purchaser is ultimately identified.

(4) Implementation of the Transaction Agreements

Once the Signing Parties and the Purchaser have settled the Transaction Agreements and executed them, the terms and conditions of the Transaction Agreements shall determine how the Transaction is to proceed thereafter.

(b) Notwithstanding anything else to the contrary in the RFP Documents, the provisions of RFP Section 3.8 regarding confidentiality shall survive any cancellation of this RFP Process and the conclusion of the RFP Process. For greater clarity, the confidentiality obligations contained within the RFP Documents shall be legally binding on all entities having signed the Confidentiality Agreement attached as Schedule 8 to this RFP, whether or not they submit an RFP Stage 1 Proposal and/or any RFP Stage 2 Proposal.

### **1.3 Fairness Monitor**

(a) 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**

- (a) The RFP Documents (the “**RFP Document(s)**”) are:
- (1) the RFP Main Body;
  - (2) Schedule 1 – RFP Data Sheet, including Appendix A – Overview of Transaction Structure;
  - (3) Schedule 2 – Requirements for New LCBO Facilities;
  - (4) Schedule 3 – Submission Requirements and Evaluation Criteria, including:
    - (i) Appendix A – Technical Submission Requirements;
    - (ii) Appendix B – Financial Submission Requirements; and
    - (iii) Appendix C – Proposal Format and Evaluation;
  - (5) Schedule 4 – Proposal Submission Forms, including:
    - (i) Appendix A – RFP Stage 1 Proposal Submission Form;
    - (ii) Appendix B – RFP Stage 2 Proposal Submission Form; and
    - (iii) Appendix C – Certificate of Officer;
  - (6) Schedule 5 – Price Forms, including:
    - (i) Appendix A – RFP Stage 1 Price Form; and
    - (ii) Appendix B – RFP Stage 2 Price Form;
  - (7) Schedule 6 – Form of Agreement of Purchase and Sale (including the Assignment of TPLC Option Agreement, the LCBO Ground Lease, the LCBO Office Lease, the Site Development Provisions, and the LCBO Retail Lease);
  - (8) Schedule 7 – Negotiations Protocol Agreement;
  - (9) Schedule 8 – Confidentiality Agreement;
  - (10) Schedule 9 – Administrative Checklist, including;

- (i) Appendix A – RFP Stage 1 Administrative Checklist; and
- (ii) Appendix B – RFP Stage 2 Administrative Checklist;
- (11) Schedule 10 – Request for Information Form;
- (12) Schedule 11 – List of Documents in the Data Room; and
- (13) Addenda to the RFP Documents, if any.

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

## **2.2 Conflicts or Inconsistencies in Documents**

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

- (1) the RFP Main Body shall prevail over the Schedules to the RFP; and
- (2) for the purposes of resolving conflicts or inconsistencies among the documents that constitute the Transaction Agreements, the provisions in the Agreement of Purchase and Sale main body shall govern.

(b) Despite RFP Section 2.2(a), if the Proponent believes that there is any term or condition in any RFP Document that is ambiguous, or that conflicts or is inconsistent with any other term or condition in the RFP Documents, the Proponent shall notify the Sponsors of that ambiguity, conflict or inconsistency in accordance with RFP Section 3.2(2) and, for greater clarity, by the deadline set out in the RFP Data Sheet for the submission of request for information (“**RFI(s)**”).

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

- (1) the Sponsors’ electronic version of the RFP Documents uploaded through MERX;  
and
- (2) any other version of the same RFP Document (whether in electronic or hard copy);

the Sponsors’ electronic version as uploaded through MERX shall govern.

(d) If there is any conflict or inconsistency between the electronic version of documents contained in the Data Room and documents that are downloaded by the Proponent, the electronic version of documents contained in the Data Room shall govern.

## **2.3 Obtaining the RFP Documents**

(a) The process by which the RFP Stage 1 Proponent may obtain the RFP Documents is set out in the RFP Data Sheet.

## **2.4 Data Room**

- (a) The Sponsors have established an electronic data room (the “**Data Room**”) at a secure website address for the provision of various types of background information for Proponents’ review (“**Background Information**”);
- (b) After execution of the Confidentiality Agreement and after receiving approval from the Sponsors, that entity will have access to the Data Room on or after the date set out in the Timetable in the RFP Data Sheet. The Sponsors may add, delete, or amend documents in the Data Room at any time.
- (c) Each Proponent is solely responsible to ensure that it:
- (1) provides an executed Confidentiality Agreement as set out in Schedule 8 to the Sponsors, which will result in the Proponent being granted access to the Data Room, if approved by the Sponsors;
  - (2) 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;
  - (3) has the appropriate software which allows the Proponent to access and download Background Information from the Data Room; and
  - (4) checks the Data Room frequently for the addition, deletion or amendment of Background Information and, at all times during the RFP Process keeps itself informed of and takes into account the most current Background Information.

## **2.5 Proponent Investigations**

- (a) Each Proponent 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 Transaction or the Transaction Agreements. The Proponents’ 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.
- (b) Except as explicitly provided in the Transaction Agreements, the Sponsors do not represent or warrant the accuracy or completeness of any information set out in the RFP Documents (or made available to the Proponents 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 by or through the Sponsors). Each Proponent shall make such independent assessments as it considers necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by the Proponent and its advisors on any and all such information shall be at the Proponent’s sole risk and without recourse against the Sponsors or the Government of Ontario.

## **SECTION 3 - THE RFP PROCESS**

### **3.1 RFP Process Timetable**

(a) The deadline for the submission of RFP Stage 1 Proposals and RFP Stage 2 Proposals (each a “**Submission Deadline**”) and the general timetable for the RFP Process (the “**Timetable**”) are set out in the RFP Data Sheet.

(b) The Sponsors may amend the Timetable in their sole discretion:

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

### **3.2 Questions and Comments on RFP Documents**

(1) Contact Person

(a) Proponents shall submit all questions and other communications regarding the RFP Documents, the RFP Process, their RFP Stage 1 Proposals and their RFP Stage 2 Proposals (if any) to the Contact Person named in the RFP Data Sheet electronically at the coordinates listed in the RFP Data Sheet. Questions shall be submitted in accordance with RFP Section 3.2(2) and shall be submitted in the form provided as Schedule 10 – Request for Information Form.

(2) Clarification/Request for Information Submission Process

(a) In addition to the requirements set out in RFP Section 3.2(1), the following rules shall apply to Proponents when submitting questions or RFIs to the Sponsors via the Contact Person during the RFP Process:

- (1) Proponents are permitted to submit RFIs which should be 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**”).
- (2) if the Sponsors disagree with a Proponent’s categorization of an RFI as a Commercially Confidential RFI, the Sponsors (via the Contact Person) will give the Proponent an opportunity to either re-categorize the RFI as a General RFI or to withdraw the RFI;
- (3) 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

- (4) if the Sponsors agree with a 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 Commercially Confidential RFI.

- (b) 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, 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, responses to RFIs will have no force or effect whatsoever and shall not be relied upon by any Proponent.

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

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

- (e) The Sponsors will respond to RFIs in writing 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.

- (f) It is the Proponent's obligation to seek clarification from the Sponsors of any matter it considers to be unclear in accordance with RFP Section 3.2(2) and, for greater clarity, by the deadline set out in the Timetable for the submission of RFIs. Neither the Sponsors nor the Government of Ontario are responsible in any way whatsoever for any misunderstanding by a Proponent 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) RFP Documents Comments

The Sponsors may, in their sole discretion, request Proponents to submit comments on the RFP Documents and, in particular, comments on the Transaction Agreements. Whether the Sponsors intend to permit or require the submission of such comments and the schedule and format for the submission of those comments will be set out in the RFP Data Sheet, if applicable. 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**

### (1) Communications with Municipalities, Other Government Authorities and Utilities

- (a) Subject to the restrictions in RFP Section 3.3(2) and any special rules set out in the RFP Data Sheet, Proponents, and their advisors are not prohibited from communicating directly with any municipality, government authority or utility with respect to municipal, utility or other types of governmental requirements related to the Transaction. Under no circumstances will any special rules set out in the RFP Data Sheet in accordance with this RFP Section 3.3(1)(a) override the provisions of RFP Section 3.3(2).

(b) Neither the Sponsors nor the Government of Ontario are, in any way whatsoever, responsible for any representations, statements, assurances, commitments or agreements which a Proponent or its advisors receive or believe they may have received from a municipality, a government authority, or a utility. Proponents and their advisors rely on any such representations, assurances, commitments or agreements at their sole risk without recourse against the Sponsors or the Government of Ontario.

(2) Prohibited Contacts and Lobbying Prohibition

(a) Proponents and 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.

(b) Without limiting the generality of RFP Section 3.3(2)(a), no Proponents or any of their advisors, employees or representatives shall contact or attempt to contact, either directly or indirectly, at any time during the RFP Process, any of the following Persons or organizations on matters related to the RFP Process, the RFP Documents, the RFP Stage 1 Proposals or the RFP Stage 2 Proposals:

- (1) any member of the Evaluation Committees;
- (2) any advisor to the Sponsors or the Evaluation Committees;
- (3) any employee or representative of:
  - (i) the Sponsors;
  - (ii) any Ministry, agency or entity listed in the RFP Data Sheet; or
  - (iii) the Premier of Ontario's office or the Ontario Cabinet office;
- (4) any Member of the Provincial Parliament (including the Premier) or his or her staff or representatives; or
- (5) any director, officer or consultant of any entity listed in RFP Sections 3.3(2)(b)(1) to (4).

(c) If a Proponent or any of its advisors, employees or representatives, in the opinion of the Sponsors, contravenes RFP Section 3.3(2)(a) or (b), the Sponsors may, in their sole discretion, but are not obligated to:

- (1) take any action in accordance with RFP Section 7; or
- (2) impose conditions on the Proponent's continued participation in the RFP Process that the Sponsors consider, in their sole discretion, to be appropriate.

(d) Notwithstanding anything to the contrary contained in this RFP, it is recognized that Brookfield Public Sector Advisory (a consortium comprised of Brookfield Financial Corporation, Brookfield Financial Real Estate Group, and Cushman & Wakefield Ltd. – collectively referred to as “**Brookfield**”), has been retained to provide real estate advisory services to the Sponsors, and are not considered a Prohibited Contact for the purposes of this RFP subject to an established communications protocol further dictating how Brookfield may communicate with Proponents. All inquiries related to this

RFP Process must be directed to the RFP Contact Person identified in the RFP Data Sheet who will then redirect the inquiry to the appropriate parties, including Brookfield, as applicable.

(3) Media Releases, Public Disclosures and Public Announcements

(a) A Proponent shall not, and shall ensure that its 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 Transaction or any matters related thereto, without the prior written consent of the Sponsors.

(b) A Proponent shall not, and shall ensure that its advisors, employees and representatives do not make any public comment, respond to questions in a public forum, or carry out any activities to either criticize another Proponent, another Proponent's RFP Stage 1 Proposal or RFP Stage 2 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)(b), Proponents and their advisors, employees and representatives are permitted to state publicly that they are participating in the RFP Process.

(c) For the purpose of greater clarity, RFP Section 3.3(3)(b) does not prohibit disclosures necessary to permit the Proponent to discuss the Transaction with prospective Subconsultants but such disclosure is permitted only to the extent necessary to solicit those Subconsultants' participation in the Transaction.

(4) Restrictions on Communications between Proponents – No Collusion

(a) A Proponent shall not discuss or communicate, directly or indirectly, with any other Proponent, any information whatsoever regarding the preparation of its own RFP Stage 1 Proposal, RFP Stage 2 Proposal, the RFP Stage 1 Proposal of any other Proponent, or the RFP Stage 2 Proposals of any other Proponent in a fashion that would contravene Applicable Laws. Proponents shall prepare and submit RFP Stage 1 Proposals and RFP Stage 2 Proposals independently and without any connection, knowledge, comparison of information or arrangement, direct or indirect, with any other Proponent.

(b) For greater clarity, RFP Section 3.3(4)(a) applies to Proponents and their advisors, employees and representatives.

### **3.4 Meetings with Proponents**

(1) General Proponents' Meeting

(a) The Sponsors may, in their sole discretion, convene one or more general Proponents meetings (each, a "**General Proponents' Meeting**") on the date(s) set out in the Timetable in the RFP Data Sheet. While attendance at the General Proponents' Meeting(s) is not mandatory, Proponents are strongly encouraged to attend.

(b) Proponents may ask questions and seek clarifications at the General Proponents' Meeting. Notwithstanding that the Sponsors may give oral answers at a General Proponents' Meeting, those answers shall not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions for response in accordance with RFP Section 3.2(2).

(c) No statement, consent, waiver, acceptance, approval or anything else said or done in the General Proponents' Meeting by the Sponsors or any of their respective advisors, employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors or be relied upon in any way by Proponents 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.

(2) New LCBO Facilities Design Presentation

(a) The Sponsors may, in their sole discretion, convene a design presentation meeting (a "**New LCBO Facilities Design Presentation**") on the date set out in the Timetable in the RFP Data Sheet. While attendance at the New LCBO Facilities Design Presentation is not mandatory, Proponents are strongly encouraged to attend.

(b) Proponents may ask questions and seek clarifications at the New LCBO Facilities Design Presentation. Notwithstanding that the Sponsors may give oral answers at the New LCBO Facilities Design Presentation, those answers shall not be considered final unless issued in writing. Therefore, Proponents are strongly encouraged to submit these questions for a written response in accordance with RFP Section 3.2(2).

(c) No statement, consent, waiver, acceptance, approval or anything else said or done in the New LCBO Facilities Design Presentation by the Sponsors or any of their 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 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) Commercially Confidential Meetings

(a) The Sponsors may, in their sole discretion, convene commercially confidential meetings with RFP Stage 2 Proponents ("**Commercially Confidential Meetings**"). These Commercially Confidential Meetings may be either or both of the following:

(1) bilateral meetings between the Sponsors and their representatives and advisors and individual RFP Stage 2 Proponents and their representatives and advisors to discuss the Transaction Agreements and the Requirements for New LCBO Facilities set out in Schedule 2 to this RFP in connection therewith; and

(2) bilateral meetings between the Sponsors and its representatives and advisors and individual Stage 2 Proponents and their representatives and advisors to discuss and/or present:

(i) the RFP Stage 2 Proponent's approach to the development of the New LCBO Facilities and presentation of preliminary designs for the New LCBO Facilities ("**Proponent Design Consultations**"); or

(ii) other matters being considered by the RFP Stage 2 Proponents for inclusion in their Proposals, as applicable,

provided that, the Sponsors will not engage in discussions that amount to an RFP Stage 2 Proponent's solicitation of guidance or coaching from Sponsors for the

development of such RFP Stage 2 Proponent's Proposals, on the basis that such discussion would compromise the fairness and integrity of the RFP Process.

(b) The location, approximate date and time, and the intended purpose of any Commercially Confidential Meetings that the Sponsors intend to hold, is set out in the Timetable and the RFP Data Sheet. While attendance at Commercially Confidential Meetings is not mandatory, RFP Stage 2 Proponents are strongly encouraged to attend. An RFP Stage 2 Proponent's failure to attend a Commercially Confidential Meeting is at the RFP Stage 2 Proponent's sole risk and responsibility. RFP Stage 2 Proponents that have commercially sensitive questions or clarifications may at all times submit a written RFI in accordance with RFP Section 3.2(2).

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

(d) The Proponent and its advisors and representatives and any of their attendees at Commercially Confidential Meetings acknowledge and agree that:

- (1) any statement made at a Commercially Confidential Meeting by the Sponsors or any of their advisors or representatives is not and shall not be deemed or considered to be an indication of a preference by the Sponsors or a rejection by the Sponsors of anything said or done by the Proponent, or its advisors or representatives;
- (2) no statement, consent, waiver, acceptance, approval or anything else said or done at a Commercially Confidential Meeting by the Sponsors or any of their advisors or representatives shall amend or waive any provision of the RFP Documents, or be binding on the Sponsors, or be relied upon in any way by the Proponent or its advisors or representatives for any purpose, including any purpose in connection with the RFP, the Transaction Agreements, the Transaction or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7, provided that the Sponsors shall not be under any obligation to confirm any information by Addendum;
- (3) the Sponsors may share process-related information, including clarifying information, with all Proponents if the need arises, as may be determined by the Sponsors; and
- (4) the Proponent and its 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) shall waive any and all rights to contest and/or protest the RFP and the processes and guidelines set out herein, including the Commercially Confidential Meetings, based on the fact that such Commercially Confidential Meetings occurred or on the basis that information may have been received during a Commercially Confidential Meeting by another Proponent or its advisors or representatives that was not received by the Proponent or any of its advisors or representatives; and

- (iii) agree that the Proponent and its advisors and representatives must treat information received at a Commercially Confidential Meeting as Confidential Information.

### **3.5 Scheduled Site Visit(s)**

(a) Proponents are not permitted access to the interior of Existing LCBO Facilities except in accordance with this RFP Section 3.5.

(b) If the Sponsors have established a scheduled date for a site visit (“**Scheduled Site Visit(s)**”) for all RFP Stage 2 Proponents and their representatives and advisors, the address, dates and times of the Scheduled Site Visits will be provided to RFP Stage 2 Proponents in writing. For clarity, any Scheduled Site Visit will only take place in RFP Stage 2.

(c) Any statement made by Infrastructure Ontario, the LCBO, or any of their respective advisors or representatives during any Scheduled Site Visit shall not and will not be relied upon in any way by Proponents or any of their respective advisors or representatives for any purpose, including any purpose in connection with the RFP, the Transaction Agreements, the Transaction, or otherwise, except and only to the extent expressly confirmed by Addendum in accordance with RFP Section 3.7, provided that neither Infrastructure Ontario nor the LCBO shall be under any obligation to confirm any information by Addendum.

(d) Except for a Scheduled Site Visit, Proponents are not permitted access to the Existing LCBO Facilities except by prior written arrangement with the Contact Person.

(e) Infrastructure Ontario may, in its sole discretion and through the Contact Person, require that an Infrastructure Ontario or the LCBO representative be present to monitor the Proponent’s activities during the Scheduled Site Visit. The Contact Person will confirm whether an Infrastructure Ontario or the LCBO representative will be present at the Scheduled Site Visit at the time the Scheduled Site Visit is approved and scheduled. The period during which Scheduled Site Visits will be permitted is set out in the Timetable. The following shall apply to the Scheduled Site Visits:

- (1) a Proponent and its advisors, upon arrival at the LCBO Head Office, shall report to the appropriate authority, sign-in as required and receive and wear an identification badge for the duration of the Scheduled Site Visit;
- (2) all Proponent 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;
- (3) all Proponent representatives shall, at all times, avoid disturbing or infringing upon the privacy of any persons occupying or working in the applicable Existing LCBO Facility;
- (4) the Proponent’s representatives shall visit only those specific areas to which the Proponent has been granted access in the Contact Person’s confirmation; and
- (5) the Proponent representatives shall not take photographs without the prior written consent of the Contact Person and express written approval by the LCBO. If photographs are permitted by the Sponsors, they may be taken by the Proponent

representatives only in the specific areas for which consent to photograph has been given.

(f) As a condition of allowing access to the site or the Existing LCBO Facilities, the Sponsors reserve the right to require Proponents to provide evidence acceptable to the Sponsors that: (i) adequate commercial/comprehensive general liability insurance and motor vehicle liability insurance is in place and (ii) the Proponent is 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 has employer's liability insurance in amounts and on terms acceptable to the Sponsors.

(g) The Sponsors may, in their sole discretion, cancel or reschedule any Scheduled Site Visit, change the areas of access of any Scheduled Site Visit or otherwise change the requirements related to any Scheduled Site Visit on short notice or no notice to Proponents or their representatives.

### **3.6 Changes to RFP Stage 2 Proponents**

(a) RFP Stage 2 Proponents shall not change their shareholders (unless the Proponent is a company whose equity securities are listed on a recognized stock exchange), proposed Subconsultants, team members, or other parties identified in the RFP Stage 1 Proponent's RFP Stage 1 Proposal without the prior written consent of the Sponsors.

(b) Despite RFP Section [3.6\(a\)](#)3.6(a), Proponents are permitted to request a change in the RFP Stage 2 Proponent in accordance with this RFP Section 3.6.

(c) If, prior to the RFP Stage 2 Submission Deadline, an RFP Stage 2 Proponent wishes to request a change in its composition, including any proposed withdrawal from, addition to, or substitution of proposed Subconsultants, team members, or other parties identified in the RFP Stage 2 Proponent's RFP Stage 1 Proposal (each a "**Proposed Change in RFP Stage 2 Proponent**"), the RFP Stage 2 Proponent shall notify the Contact Person as soon as possible and, in any event, no later than fifteen (15) days prior to the Submission Deadline. That notification shall clearly identify the Proposed Change in RFP Stage 2 Proponent (including, as applicable, any proposed additional or substitute Subconsultant or team member) and provide sufficient documentation to demonstrate that:

- (1) such Proposed Change in RFP Stage 2 Proponent will not materially adversely affect the RFP Stage 2 Proponent's ability to submit a complete and compliant Proposal or impair the RFP Stage 2 Proponents' ability to perform its obligations under the Transaction Agreements; and
- (2) in the event that the Proposed Change in RFP Stage 2 Proponent is a proposed addition to or substitution of one or more of the proposed Subconsultants, team members, or other parties identified in the RFP Stage 2 Proponent's RFP Stage 1 Proposal, the proposed additional or substitute party(ies) would have met or exceeded any applicable criteria applied during the RFP Stage 1.

(d) In response to a request in accordance with RFP Section 3.6(c), the Sponsors may, in their sole discretion, provide the RFP Stage 2 Proponent with instructions as to the type of information required by the Sponsors to consider the Proposed Change to the composition RFP Stage 2 Proponent as well as the

deadlines for submission of information that the RFP Stage 2 Proponent must meet in order to have its request considered by the Sponsors.

(e) The RFP Stage 2 Proponent shall provide any further documentation as may be reasonably requested by the Sponsors to assess any Proposed Change in RFP Stage 2 Proponent. If the Sponsors, in their sole discretion, consider the Proposed Change in RFP Stage 2 Proponent to be acceptable, the Sponsors may consent to such Proposed Change in RFP Stage 2 Proponent. The Sponsors' consent to such Proposed Change, however, may be subject to such terms and conditions as the Sponsors may require. Without limiting the generality of the foregoing,

- (1) in the event that the Proposed Change in RFP Stage 2 Proponent is a proposed withdrawal of a Subconsultant, team member, or other party identified in the RFP Stage 2 Proponent's RFP Stage 1 Proposal, then, unless otherwise permitted by the Sponsors in writing, the Proponent shall propose a substitute party review by the Sponsors in the manner described in RFP Section 3.6(c) and if such proposed substitute is not acceptable to the Sponsors, the Proponent shall propose an alternate substitute for review by the Sponsors in the same manner as the first proposed substitute; or
- (2) in the event that the Proposed Change in RFP Stage 2 Proponent is a proposed substitute for a Subconsultant, team member, or other party identified in the RFP Stage 2 Proponent's RFP Stage 1 Proposal, which, for clarity, must be proposed for review by the Sponsors in the manner described in RFP Section 3.6(c), and if such proposed substitute is not acceptable to the Sponsors, the Proponent may propose an alternate substitute for review by the Sponsors in the same manner as the first proposed substitute.

(f) The Sponsors may, in their sole discretion, disallow any Proposed Change in RFP Stage 2 Proponent or actual change of a Subconsultant, team member, or other party identified in the RFP Stage 2 Proponent's RFP Stage 1 Proposal made by that RFP Stage 2 Proponent.

(g) In the case of an actual change in a Subconsultant, team member, or other party identified in the RFP Stage 2 Proponent's RFP Stage 1 Proposal made by that RFP Stage 2 Proponent without the consent of the Sponsors or if such change is proposed after the RFP Stage 2 Submission Deadline and before expiry of the Negotiations Period, the Sponsors may, in their sole discretion, disqualify the RFP Stage 2 Proponent and terminate the Proponent's continued involvement in the RFP Process or allow the RFP Stage 2 Proponent to continue under such terms and conditions as the Sponsors, in their sole discretion, may require.

(h) If, on or after the RFP Stage 2 Submission Deadline and prior to Title Transfer, there is an actual or Proposed Change in RFP Stage 2 Proponent, or if there is a change in circumstances that may materially adversely affect an RFP Stage 2 Proponent in a way which could impair the RFP Stage 2 Proponent's ability to perform their respective obligations under the Transaction Agreements, then the RFP Stage 2 Proponent shall promptly notify the Sponsors in writing by courier or email to the Contact Person. The Sponsors may, in their sole discretion, refuse to accept a change in an RFP Stage 2 Proponent that occurs or is requested by the RFP Stage 2 Proponent after the Submission Deadline and may, in their sole discretion, disqualify the RFP Stage 2 Proponent from continuing in the RFP Process or Negotiations Process, as the case may be.

(i) If, at any time after the RFP Stage 1 Proposal Deadline and prior to the selection of the Negotiations Proponent, and notwithstanding any other provision in this RFP, there is a Change in Control of an RFP Stage 2 Proponent (the “Acquiree”) whereby it becomes controlled by one of the other RFP Stage 2 Proponents (the “Acquirer”):

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

### **3.7 Addenda/Changes to the RFP Documents**

(a) The Sponsors may, in their sole discretion, amend or supplement the RFP Documents prior to the Submission Deadline. The Sponsors shall issue changes to the RFP Documents by Addenda only. No other statement, whether oral or written, made by the Sponsors 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 Transaction Agreements is set out in the Timetable. The Sponsors may issue other Addenda at any time prior to such final date.

(b) 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.

(c) The Sponsors shall issue Addenda by uploading Addenda through MERX.

(d) Any reference to any one or all of 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**

#### **(1) Freedom of Information and Protection of Privacy Act**

(a) Proponents are advised that the Sponsors may be required to disclose the RFP Documents and a part or parts of any RFP Stage 1 Proposal or RFP Stage 2 Proposal pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) (“**FIPPA**”).

(b) Proponents are also advised that FIPPA provides certain protections for confidential and proprietary business information. Proponents are strongly advised to consult their own legal advisors as to the appropriate way in which confidential or proprietary business information should be marked as such in their RFP Stage 1 Proposals and RFP Stage 2 Proposals.

(c) 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 if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under Applicable Laws.

(2) Confidentiality Agreements

(a) The Proponents have executed and delivered to the Sponsors the Confidentiality Agreement in the form prescribed in Schedule 8 to this RFP. To the extent that the provisions of the Confidentiality Agreement are inconsistent or conflict with the requirements of RFP Section 3.8(3), the more stringent confidentiality obligation shall govern. All Proponents signing the Confidentiality Agreement must be able to attest to the following statement contained in the Confidentiality Agreement: “By signing below the Proponent also certifies that it has completed or participated in a major mixed use development project as a developer, builder, designer, or financier (equity or debt).”

(3) Confidential Information

(a) 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 Transaction, whether supplied, obtained from or provided before or after the RFP Process.

(b) The Proponent agrees that all Confidential Information:

- (1) shall remain the sole property of the Government of Ontario or the Sponsors, as applicable, and the Proponent shall treat it as confidential;
- (2) shall not be used by the Proponent for any purpose other than developing and submitting an RFP Stage 1 Proposal and/or RFP Stage 2 Proposal in response to this RFP Process or the performance of any subsequent agreement relating to the Transaction with the Signing Parties;
- (3) shall not be disclosed by the Proponent to any Person who is not involved in the Proponent’s preparation of its RFP Stage 1 Proposal and/or RFP Stage 2 Proposal, or the performance of any subsequent agreement relating to the Transaction with the Signing Parties, without prior written consent of the Sponsors or the Government of Ontario, as applicable;
- (4) shall not be used in any way detrimental to the Sponsors or the Government of Ontario; and
- (5) shall, if requested by the Sponsors, be returned by the Proponents to the Sponsors no later than ten (10) calendar days after that request.

(c) Each Proponent shall be responsible for any breach of the provisions of this RFP Section 3.8 by any Person to whom it discloses the Confidential Information including, for greater clarity, the Proponent’s employees, representatives and advisors. Each Proponent shall indemnify each of the Sponsors, 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 by the Proponent or by any Person to whom the Proponent has disclosed the Confidential Information.

(d) Each Proponent acknowledges and agrees that a breach of the provisions of this RFP Section 3.8 would cause the Sponsors, the Government of Ontario and their related entities to suffer loss that could not be adequately compensated by damages, and that the Sponsors, the Government of Ontario and any of their related entities may, in addition to any other remedy or relief, enforce any of the provisions of this RFP Section 3.8 upon application to a court of competent jurisdiction without proof of actual damage to the Sponsors, the Government of Ontario or any of their related entities.

(e) Notwithstanding anything else to the contrary in the RFP Documents, the provisions of this RFP Section 3.8 shall survive any cancellation of this RFP Process and the conclusion of the RFP Process and, for greater clarity, shall be legally binding on all entities that have signed a Confidentiality Agreement, whether or not they submit an RFP Stage 1 Proposal and/or any RFP Stage 2 Proposal.

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

- (1) 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;
- (2) 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
- (3) 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.

(4) Copyright and Use of Information in RFP Stage 1 Proposals and RFP Stage 2 Proposals

(a) The Sponsors' rights, as set out in this RFP Section 3.8(4), to the RFP Stage 1 Proposal or any RFP Stage 2 Proposals and all information submitted by the Proponent during the RFP Process shall be granted to the Sponsors upon submission of the RFP Stage 1 Proposals or RFP Stage 2 Proposals.

(b) Proponents shall not use or incorporate into their RFP Stage 1 Proposals or into any RFP Stage 2 Proposal any concepts, products or processes which are subject to copyright, patents, trademarks or other intellectual property rights of third parties unless Proponents have the express right to use and employ such concepts, products and processes in and for the Transaction.

(c) 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.

- (d) For the purpose of this RFP Section 3.8(4)(d), “**Proposal Information**” includes:
- (1) all information contained in an RFP Stage 1 Proposal or an RFP Stage 2 Proposal which is disclosed by or through a Proponent to the Sponsors during the evaluation of RFP Stage 1 Proposals and RFP Stage 2 Proposals or during the process of executing any Transaction Agreements; and
  - (2) any and all ideas, concepts, products, processes, recommendations and suggestions developed by or through a Proponent and revealed to or discovered by the Sponsors, including any and all those which may be connected in any way to the preparation, submission, review or negotiation of any RFP Stage 1 Proposal, any RFP Stage 2 Proposal, or any of the Transaction Agreements.

(e) The Proponent shall grant to the Sponsors and Her Majesty the Queen 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 (collectively the “**Proposal Information Licence**”) at no cost to the Sponsors or Her Majesty the Queen in Right of Ontario. Without limiting the foregoing, the Proposal Information Licence shall include the right to modify the Proposal Information, as applicable and, where applicable, to use it, or any modified form of it, anywhere in the world.

(f) Proponents shall ensure that all intellectual property rights associated with any and all of the Proposal Information (including copyright and moral rights but excluding patent rights) provide for and give the Sponsors and Her Majesty the Queen in Right of Ontario the rights set out in this RFP Section 3.8. It is expressly understood and agreed that any actual or purported restriction in the future on the ability of the Sponsors or Her Majesty the Queen 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, Her Majesty the Queen in Right of Ontario and each of their respective advisors, and that the provisions of this RFP Section 3.8(4)(f) shall take precedence and govern.

### **3.9 Conflict of Interest and Ineligible Persons**

#### (1) Conflict of Interest

(a) Proponents and their advisors, shall disclose, in their completed RFP Stage 1 Proposal Submission Form (Appendix A to Schedule 4 of this RFP) and RFP Stage 2 Proposal Submission Form (Appendix B to Schedule 4 of this RFP) all perceived, potential and actual Conflicts of Interest.

(b) If a Proponent, or any of its advisors, prior to or following submission of its RFP Stage 1 Proposal and any RFP Stage 2 Proposals, discovers any perceived, potential or actual Conflicts of Interest, the Proponent shall promptly disclose the perceived, potential or actual Conflict of Interest to the Sponsors in a written statement to the Contact Person.

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

(d) The Sponsors may, in their sole discretion, exclude any Proponent's advisor on the grounds of Conflict of Interest.

(e) Without limiting the generality of RFP Sections 3.9(1)(d) or (f), the Sponsors may, in their sole discretion, require the Proponent, or their advisor(s) to substitute a new Person for the Person giving rise to the Conflict of Interest.

(f) The Sponsors may, in their sole discretion, waive any and all perceived, potential or actual Conflicts of Interest of Proponents 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.

(g) **"Conflict of Interest"** includes any situation or circumstance where, in relation to the RFP, the RFP Process, the Transaction and/or Transaction Agreements, the Proponents or their advisors have:

- (1) has other commitments, relationships or financial interests or involvement in ongoing litigation that:
  - (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of the independent judgment by any personnel of the Sponsors or their advisors; or
  - (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of a Proponent's obligations under the Transaction Agreements if that Proponent was determined to be the Purchaser under the RFP Process;
- (2) has contractual or other obligations to the Sponsors that could or could be seen to have been compromised or otherwise impaired as a result of its participation in the RFP Process or the Project; or
- (3) 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.

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

(2) Ineligible Persons

(a) As a result of their involvement in the Transaction, the Persons named in the RFP Data Sheet as **"Ineligible Persons"**, their current and former employees, and any of their Subconsultants or representatives engaged in respect of this Transaction and, subject to RFP Sections 3.9(2)(c) and 3.9(2)(d) any Person controlled by, that controls or that is under common control with any of the Ineligible Persons

(each an “**Ineligible Person’s Affiliate**”) may not be eligible to participate as a Proponent or advisor to the Proponent.

(b) The Sponsors may amend the Ineligible Persons list in the RFP Data Sheet from time to time during the RFP Process by way of an Addendum.

(c) An Ineligible Person’s Affiliate may be eligible to participate as a Proponent only after it has obtained a written consent from the Sponsors permitting it to participate as a Proponent. To obtain consent for an Ineligible Person’s Affiliate to participate as a Proponent, the Proponent must submit a request for consent to the Contact Person that includes the following information:

- (1) the full legal name of the Ineligible Person’s Affiliate that the Proponent wishes to include on its team or as a Proponent;
- (2) information regarding the Ineligible Person’s Affiliate’s relationship to the Ineligible Person listed in the RFP Data Sheet; and
- (3) a description of the policies and procedures that will be put in place to manage, mitigate or minimize the impact of any potential Conflict of Interest.

(d) Upon the Contact Person’s receipt of a Proponent’s properly completed request for consent in accordance with RFP Section 3.9(2)(c), the Sponsors shall, in their sole discretion, make a determination as to whether they consider there to be a real, perceived or potential Conflict of Interest and whether the impact of such real perceived or potential Conflict of Interest can be appropriately managed, mitigated or minimized. The Proponent shall be notified of the Sponsors’ decision by means of a letter setting out the nature of the consent, if any, and the management, mitigation or minimization measures required as a condition of consent. If the Ineligible Person’s Affiliate is considered to have a Conflict of Interest, the impact of which cannot be properly managed, mitigated or minimized, the Sponsors shall add the Ineligible Person’s Affiliate to the Ineligible Persons list by Addendum.

### **3.10 Proponent Costs**

(a) The Proponent shall bear all costs and expenses incurred by it relating to any aspect of its participation in this RFP Process, including all costs and expenses related to its involvement in:

- (1) the preparation, presentation and submission of its RFP Stage 1 Proposal;
- (2) if applicable, the preparation, presentation, submission, negotiation and finalization of any and all of its RFP Stage 2 Proposals and any related Transaction Agreement;
- (3) attendance at the General Proponents’ Meeting, the New LCBO Facilities Design Presentation, Commercially Confidential Meetings, or any other meeting with the Sponsors;
- (4) due diligence and information gathering processes;
- (5) Scheduled Site Visit(s);

- (6) preparation of responses to questions or requests for information from the Sponsors; and
- (7) preparation of the Proponent's own RFIs during the clarification process.

(b) Neither the Sponsors nor the Government of Ontario are 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.

(c) Should a Proponent choose to involve an agent or broker, such Proponent shall be solely responsible for any commission or compensation payable to such agent or broker. The Sponsors will not be responsible for any commissions or fees whatsoever in connection with the Transaction.

## **SECTION 4 - PROPOSAL FORM AND CONTENT REQUIREMENTS**

### **4.1 Format and Content of the Proposal**

(a) Proponents shall submit RFP Stage 1 Proposals and/or RFP Stage 2 Proposals organized in accordance with and in the format set out in Appendix C of Schedule 3 to this RFP.

## **SECTION 5 - SUBMISSION, WITHDRAWAL, MODIFICATION OF PROPOSALS**

### **5.1 Submission of Proposal**

(a) Each Proponent shall submit its Proposal before the applicable Submission Deadline. For the purposes of the RFP Process, the determination of whether the Proposal is submitted before the Submission Deadline shall be based on the time and date stamp the Proponent must ensure it receives from Infrastructure Ontario at the address for submission set out in the RFP Data Sheet. An RFP Stage 1 Proposal or RFP Stage 2 Proposal received after the Submission Deadline, in each case as documented by the time and date stamp, shall be returned unopened to the sender.

(b) A Proponent shall submit its RFP Stage 1 Proposal and RFP Stage 2 Proposal by sending them by pre-paid courier or hand delivery to Infrastructure Ontario at the address set out in the RFP Data Sheet. It is the sole responsibility of the Proponent to ensure that the RFP Stage 1 Proposal or RFP Stage 2 Proposal is received by Infrastructure Ontario prior to the relevant Submission Deadline and to ensure it receives a date and time stamp receipt from Infrastructure Ontario confirming the timely delivery of the Proposal. The Sponsors will not accept RFP Stage 1 Proposals or RFP Stage 2 Proposals delivered by electronic mail.

(c) A Proponent shall provide such number and type of hard and electronic copies of Proposals as specified in Appendix C of Schedule 3 to this RFP.

(d) If there is any difference whatsoever between the electronic copy of an RFP Stage 1 Proposal or RFP Stage 2 Proposal and the original hard copy of the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, the original hard copy of the RFP Stage 1 Proposal or RFP Stage 2 Proposal shall govern.

## **5.2 Withdrawal of Proposals**

(a) A Proponent may withdraw either its RFP Stage 1 Proposal or RFP Stage 2 Proposal at any time by giving written notice to the Contact Person.

## **5.3 Amendment of Proposal**

(a) A Proponent may amend its RFP Stage 1 Proposal or RFP Stage 2 Proposal after submission but only if the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, is resubmitted before the relevant Submission Deadline in accordance with the following:

- (1) the Proponent shall withdraw its original RFP Stage 1 Proposal or RFP Stage 2 Proposal by notifying the Contact Person in writing before the relevant Submission Deadline; and
- (2) the Proponent shall submit a revised replacement RFP Stage 1 Proposal or RFP Stage 2 Proposal in accordance with Appendix C to Schedule 3 of this RFP and before the relevant Submission Deadline in accordance with the requirements of RFP Section 5.1.

## **5.4 Participation in Multiple Proposals**

(a) Proponents should submit no more than one (1) Proposal. For greater certainty, if a Proponent has more than one office (e.g. a regional office), it will only be permitted to submit one Proposal. Should the Proponent submit more than one Proposal, the Proposal with the later time/date stamp will be the Proposal that Sponsors will evaluate.

(b) Should a Proponent wish to participate in multiple proposals, they must submit a written request for consideration to the Contact Person set out in the RFP Data Sheet. The Sponsors will review such written request, and render a decision at its sole and absolute discretion.

## **SECTION 6 - EVALUATION, CLARIFICATION AND VERIFICATION OF PROPOSALS**

### **6.1 Evaluation Committee and Advisors**

(a) The Sponsors will establish an evaluation committee (the “**Evaluation Committee**”) for the purpose of evaluating RFP Stage 1 Proposals and RFP Stage 2 Proposals, as applicable, 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.

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

Committee or sub-committee member, in these circumstances, is replaced in the sole discretion of the Sponsors.

## **6.2 Sponsors' Clarification and Verification of Proposals**

(a) The Sponsors may:

- (1) require the Proponent to clarify or verify any statements made in or the contents of its RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, or any statement made by the Proponent;
- (2) require the Proponent to submit supplementary documentation clarifying or verifying any matters contained in its RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable; and
- (3) seek a Proponent's acknowledgement of the Sponsor's interpretation of the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, or any part of the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable.

(b) The Sponsors are not obliged to seek clarification or verification of any aspect of an RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, or any statement by a Proponent, including an ambiguity in an RFP Stage 1 Proposal or an RFP Stage 2 Proposal, as applicable, or in a statement made by a Proponent.

(c) 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 that Proponent's RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable.

## **6.3 Steps in the Evaluation Process**

### **(1) Step 1 – Compliance of Proposals**

(a) The Sponsors will open each RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, and will review the contents of the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, to assess whether it is in compliance with the terms and conditions of the RFP Documents, including whether all documents required to be submitted have been appropriately submitted.

(b) If, in the sole discretion of the Sponsors, an RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, does not comply with the requirements set out in the RFP Documents, the Sponsors may, in their sole discretion, without liability, cost or penalty, eliminate or disqualify the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, such that it shall not be given any further consideration.

(c) For purposes of this RFP, "comply" and "compliance" mean that the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, conforms to the requirements of the RFP Documents without material deviation. A "material deviation" in a RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, is any failure to comply with an RFP Document requirement that, in the sole discretion of the Sponsors:

- (1) impedes, in any material way, the ability of the Sponsors to evaluate the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable;
- (2) affects the Sponsors' ability to enforce the Proponent's obligations pursuant to the RFP Documents; or
- (3) constitutes an attempt by the Proponents to revise the Sponsors' or the Proponent's rights or obligations under the RFP Documents in a way not permitted by this RFP.

(d) A requirement in this RFP or in the Schedules to this RFP that a Proponent "must" or "shall" do anything is not intended to supersede this RFP Section 6.3(1) or, for greater clarity, to supersede the concepts of "comply", "compliance" or "material deviation" set out in this RFP Section 6.3(1).

(e) A Proponent's submission of a complete but poor quality RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, shall not be considered a failure to comply but may affect the Proponent's evaluated score.

(f) If, during Step 1 of the evaluation process or at any time during the RFP Process, the Sponsors determine that an RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, is non-compliant pursuant to this RFP Section 6.3, the Sponsors may, in their sole discretion and without liability, cost or penalty, declare the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, to be non-compliant and the RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, shall not be given any further consideration.

(g) Each Proponent acknowledges and agrees that the Sponsors' evaluation of compliance with the RFP Documents is not an evaluation of absolute compliance and that the Sponsors may waive failures to comply that, in the Sponsors' sole discretion, do not constitute a material deviation in accordance with this RFP Section 6.3(1).

(h) With the exception of mandatory requirements, if any, an omission or error in connection with any submission requirement in this RFP will not lead to the automatic rejection of the Proposal concerned, provided the Proponent remedies the error or omission to the Sponsor's satisfaction within the time determined by the Sponsor, which must be at least 24 hours following the date upon which the Proponent receives a written request to that effect from the Contact Person. Notwithstanding the foregoing, the Sponsors reserve the right to waive a material deviation (with the exception of mandatory requirements, if any) under this RFP without liability.

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

(a) The Sponsors shall review either the RFP Stage 1 Proposal Submission Form or RFP Stage 2 Proposal Submission Form, as applicable, to:

- (1) ensure that the form has been properly completed and signed;
- (2) ensure that there have been no changes to a Proponent in the RFP Stage 2 Proposal from its RFP Stage 1 Proposal, except for changes that have been approved by the Sponsors in accordance with RFP Section 3.6; and

- (3) assess the Conflict of Interest and Confidential Information section of the RFP Stage 1 Proposal Submission Form and the RFP Stage 2 Proposal Submission Form.

(3) Step 3 – Evaluation of Proposals

- (a) The Sponsors will conduct the following steps of evaluation concurrently:

- (1) Evaluation and scoring of the Technical Submission

The Technical Submission will be evaluated and scored in accordance with Appendix C of Schedule 3 to this RFP.

- (2) Evaluation and scoring of the Financial Submission

The Financial Submission will be evaluated and scored in accordance with Appendix C of Schedule 3 to this RFP.

Proponents must note that the Upfront Payment submitted as per the RFP Stage 2 Price Form must not be lower than the Upfront Payment as per the submitted RFP Stage 1 Price Form.

(4) Step 4 – Establishing a Final Proposal Score

- (a) For the purpose of the evaluation process, the weightings and scoring set out in Appendix C to Schedule 3 to this RFP will apply.

(5) Step 5 – Ranking Proponents

- (a) The Evaluation Committee shall rank only those Proponents that have met all requirements in Steps 1 through 4, and shall base the ranking on the Final Proposal Score for each of RFP Stage 1 and RFP Stage 2.

- (b) Up to three (3) of the highest ranked RFP Stage 1 Proponents having met all of the requirements of RFP Stage 1 will proceed to RFP Stage 2. Should the Sponsors receive less than three (3) RFP Stage 1 Proposals, the Sponsors reserve the right to move forward to RFP Stage 2 those RFP Stage 1 Proponents that have met all of the applicable requirements for RFP Stage 1.

- (c) In either the RFP Stage 1 or the RFP Stage 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 with the higher Financial Score.

(6) Step 6 – Selection of Negotiations Proponent

- (a) The RFP Stage 2 Proponent with the highest Final Proposal Score will be identified as the Negotiations Proponent at which point the RFP Process is at an end. The highest ranked RFP Stage 2 Proponent will then proceed to enter into the Negotiations Protocol Agreement with the LCBO and become the Negotiations Proponent. Detailed information regarding the Negotiations Process will be provided to the Negotiations Proponent in advance of commencement of the Negotiations Process.

(b) The purpose of the Negotiations Process with the Negotiations Proponent is to identify a Purchaser with whom the LCBO will enter into the Transaction Agreements.

(c) Should negotiations with the Negotiations Proponent fail, the LCBO may, in its sole discretion, invite the RFP Stage 2 Proponent whose total score is the next highest from the RFP Process (“**Reserved Negotiations Proponent**”) to enter into the Negotiations Protocol Agreement and participate in the Negotiations Process. Should this occur, that Negotiations Proponent would thereafter be eliminated from further negotiations with the LCBO.

## **SECTION 7 - GENERAL EVALUATION AND DISQUALIFICATION PROVISIONS**

### **7.1 Sponsors’ Discretion in Determining Compliance, Scoring and Ranking**

- (a) The Sponsors shall, in their sole discretion, determine:
- (1) the membership of the Evaluation Committee and any sub-committees of the Evaluation Committee;
  - (2) whether RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, is compliant with the RFP Documents;
  - (3) whether a failure to comply constitutes a material deviation;
  - (4) whether any established scoring threshold should be adjusted;
  - (5) the Final Proposal Scores of the RFP Stage 1 Proposals and subsequent RFP Stage 2 Proposals; and
  - (6) the rankings of the RFP Stage 1 Proposals and RFP Stage 2 Proposals, as applicable.

(b) The Sponsors have the right, at any time and in their sole discretion, to consider in the evaluation of RFP Stage 1 Proposals or RFP Stage 2 Proposals and in the exercise of any of the Sponsors’ rights under this RFP any publicly available information about a Proponent that is, in the Sponsors’ sole discretion, credible information.

### **7.2 Disqualification**

(a) The Sponsors may, in their sole discretion, disqualify an RFP Stage 1 Proposal or RFP Stage 2 Proposal at any time prior to identification of the Negotiations Proponent, if:

- (1) the RFP Stage 1 Proposal or RFP Stage 2 Proposal is determined to be non-compliant pursuant to RFP Section 6.3(1);
- (2) the Proponent fails to cooperate in any attempt by the Sponsors to verify any information provided by the Proponent in its RFP Stage 1 Proposal or RFP Stage 2 Proposal;
- (3) the Proponent contravenes RFP Section 3.3;

- (4) the Proponent fails to comply with Applicable Laws;
- (5) the RFP Stage 1 Proposal or RFP Stage 2 Proposal contains false or misleading information or a misrepresentation;
- (6) the RFP Stage 1 Proposal or RFP Stage 2 Proposal, in the opinion of the Sponsors, reveals a 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)(f) or a consent in accordance with RFP Section 3.9(2)(d), as applicable; and
  - (ii) fails to substitute another Person for the Person giving rise to the Conflict of Interest in accordance with RFP Section 3.9(1)(e);
- (7) in the opinion of the Sponsors, acting reasonably, the Proponent or any of its advisors, employees or representatives directly or indirectly colluded with one or more other Proponents or any of its advisors, employees or representatives in the preparation or submission of an RFP Stage 1 Proposal or RFP Stage 2 Proposal or otherwise contravened RFP Section 3.3(4);
- (8) the Proponent has committed a material breach of any existing agreement between the Proponent and a Sponsor; or
- (9) the Proponent has been convicted of a criminal or quasi-criminal offence in connection with any services rendered to a Sponsor or any Ministry, agency, Board or Commission of the Government of Ontario.

## **SECTION 8 - GENERAL LEGAL MATTERS AND RIGHT TO ACCEPT OR REJECT**

### **8.1 General Rights of the Sponsors**

(a) The Sponsors reserved rights related to this RFP Process are set out in RFP Sections 6.3(1)(g) and (h) and RFP Section 8.4(b).

(b) Each RFP Stage 1 Proponent and RFP Stage 2 Proponent is required to provide a certificate of an officer in the form of Appendix C of Schedule 4 to this RFP – Certificate of Officer. Without limitation to any other rights of the Sponsors hereunder, in order to ensure the integrity, openness and transparency of the procurement process, the Sponsors may, in their sole discretion, require at any time, including any time after an RFP Stage 1 Proponent or RFP Stage 2 Proponent has submitted an RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, that any Subconsultant, advisor, partner, or representative of any Proponent provide or submit a certificate of an officer in the form attached as Appendix C of Schedule 4 to this RFP – Certificate of Officer.

(c) Without limitation to any other rights of the Sponsors in this RFP, in order to ensure the integrity, openness and transparency of the procurement process, the Sponsors may, in their sole discretion:

- (1) impose at any time on Proponents and any Subconsultant, advisor, partner, or representative of any Proponent, additional conditions, requirements or measures

with respect to bidding practices or ethical behaviour of the Proponents and Subconsultant, advisor, partner, or representative of any Proponent; and

- (2) require that any or all Proponents and/or any Subconsultant, advisor, partner, or representative of any Proponent at any time during the RFP Process provide the Sponsors with copies of its internal policies, processes and controls establishing ethical standards for its bidding practices and evidence of compliance by the Proponent and Subconsultant, advisor, partner, or representative of any Proponent with such policies, processes and controls.

(d) Further to Sections 8.1(b) and 8.1(c), and in the event that a Proponent and/or Subconsultant, advisor, partner, or representative of a Proponent either:

- (1) fails to comply with any requirement prescribed by the Sponsors pursuant to Section 8.1(b) or 8.1(c); or
- (2) complies with the Sponsors' requirement as prescribed in accordance with Section 8.1(b) or 8.1(c), but the Sponsors determine that the Proponent and/or Subconsultant, advisor, partner, or representative of the Proponent 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 an RFP Stage 1 Proposal or RFP Stage 2 Proposal from an RFP Stage 1 Proponent or RFP Stage 2 Proponent, as applicable, or to otherwise elect not to proceed further in the procurement process with a Proponent, including after notifying such Proponent that the Proponent has been named as the Negotiations Proponent.

## **8.2 Limit on Sponsors' Liability for Proponent's Costs**

(a) Neither the Sponsors nor the Government of Ontario shall be liable for any expense, cost, loss or damage incurred or suffered by any Proponent, any Proponent advisor or any Person connected with any one of them, as a result of any action taken by the Sponsors in respect of the RFP Process, Negotiations Process, and settlement and execution of the Transaction Agreements, and implementation of the Transaction.

## **8.3 Applicable Laws and Attornment**

(a) This RFP shall be governed and construed in accordance with Applicable Laws as defined in the Transaction Agreements.

(b) The Proponent agrees that:

- (1) 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;
- (2) 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

- (3) 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 8.3.

#### **8.4 RFP Not a “Bidding Contract” or a Tender**

(a) Notwithstanding any other provision of this RFP, this RFP is not a tender and is not an offer to enter into either a bidding contract (often referred to as “**Contract A**”) or a contract to carry out the Transaction (often referred to as “**Contract B**”). Except as provided in RFP Sections 3.8, 8.2, and 8.3, neither this RFP nor the submission of RFP Stage 1 Proposal or RFP Stage 2 Proposal by a Proponent shall create any legal or contractual rights or obligations whatsoever on any of the Proponent, the LCBO, Infrastructure Ontario, the Government of Ontario or any Ministry of the Government of Ontario. Except as provided in RFP Section 3.8, 8.2 and 8.3, no legal relationship or obligation of any kind whatsoever shall be created between the Proponent, the LCBO, Infrastructure Ontario, the Government of Ontario or any Ministry of the Government of Ontario until the successful negotiation and execution of the Transaction Agreements.

(b) Without limiting the generality of RFP Section 8.4(a), the following principles apply to this RFP Process:

- (1) The Sponsors may, in their sole discretion, change or discontinue this RFP Process at any time whatsoever;
- (2) The Sponsors may, in their sole discretion, decline to evaluate any Proposal that, in its sole discretion, is incomplete, obscure or does not contain sufficient information to carry out a reasonable evaluation;
- (3) The Sponsors may, in their sole discretion, request any supplementary information whatsoever from a Proponent after the applicable RFP Stage 1 Proposal Submission Deadline or RFP Stage 2 Proposal Submission Deadline, including information that the Proponent could or should have submitted prior to the applicable RFP Stage 1 Proposal Submission Deadline or RFP Stage 2 Proposal Submission Deadline (provided however, that the Sponsors are not obliged in any way whatsoever to request supplementary information from a Proponent);
- (4) While the pricing information provided is subject to the non-binding nature of this RFP Process, such information will be assessed during the evaluation of RFP Stage 1 Proposals or RFP Stage 2 Proposals, as applicable, and accordingly, misleading or incomplete information, including withdrawn or altered pricing during negotiations, could adversely impact any such evaluation or negotiations and result in the cessation of negotiations with that Proponent;
- (5) If at any time prior to RFP Stage 2 Proposal Submission Deadline, any RFP Stage 2 Proponent withdraws or is disqualified from the RFP Process, the Sponsors may, in their sole discretion, invite the next highest-ranked Proponent from RFP Stage 1, other than the withdrawing or disqualified Proponent (the “**Reserve Stage 2 Proponent**”) to participate in the RFP Stage 2 in place of the withdrawn or disqualified Proponent. For clarity, the Reserve Stage 2 Proponent must have submitted a complete RFP Stage 1 Proposal in accordance with the terms and conditions of this RFP, and achieved all minimum scores

required by Schedule 3 Appendix C of this RFP and satisfied any other conditions imposed by the Sponsors. Upon the Reserve Stage 2 Proponent's written acceptance of such invitation, the Reserve Stage 2 Proponent shall become a RFP Stage 2 Proponent under this RFP.

- (6) The Sponsors may, in their sole discretion and at any time prior to the LCBO entering into the Agreement of Purchase and Sale:
- (i) reject any or all of the RFP Stage 1 Proposals or RFP Stage 2 Proposals, as applicable;
  - (ii) accept any RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable;
  - (iii) if only one RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable is received, either elect to accept or reject it or to enter into negotiations with the applicable Proponent;
  - (iv) elect to discontinue the RFP Process;
  - (v) alter the Timetable;
  - (vi) change the RFP Process or any other aspect of the RFP Documents;
  - (vii) verify with any Proponent or with a third party any information in an RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable;
  - (viii) check references other than those provided by any Proponent;
  - (ix) disqualify a Proponent who submits an RFP Stage 1 Proposal or RFP Stage 2 Proposal, as applicable, containing misrepresentations or any other inaccurate or misleading information;
  - (x) disqualify any Proponent who has engaged in conduct prohibited by this RFP;
  - (xi) retract the selection of a Proponent as a Negotiations Proponent in the event that the Sponsors, in their sole and absolute discretion, determine that the Proponent has not complied or adhered to its requirements and obligations under the Negotiations Protocol Agreement, and
  - (xii) cancel this RFP Process, the Negotiations Process, or Transaction implementation, and subsequently conduct another competitive process for the same Transaction or subsequently enter into negotiations with any Person with respect to the Transaction that is the subject matter of this RFP.
- (c) Nothing in Section 8.4(b) above shall limit the rights of the Sponsors or the Proponents to conduct themselves in accordance with the common law governing direct commercial negotiations in accordance with the Applicable Laws.

## **8.5 Licenses, Permits, etc.**

(a) If a Proponent is required by Applicable Laws to hold or obtain a licence, permit, consent or authorization to carry on an activity contemplated in its Proposal or in the Transaction Agreements, neither the acceptance of the Proposal or the execution of the Transaction Agreements 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.

## **8.6 Power of Legislative Assembly**

(a) 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.

## **8.7 Governmental Authorization and Approvals**

(a) The RFP Process together with the Negotiations Process, the Negotiations Protocol Agreement, and the Transaction Agreements are subject to the Sponsors obtaining any necessary authorizations and approvals required in connection with entering into the Transaction Agreements and completing the Transaction, including, for certainty, the approval of any relevant government authority and the approvals required under Section 28 of the *Financial Administration Act*, R.S.O. 1990, c.F.12.

## **SECTION 9 - NOTIFICATION AND DEBRIEFING**

(a) After the Purchaser has been identified, and the Agreement of Purchase and Sale entered into with the LCBO, the Sponsors will formally notify all Proponents who were not successful in the RFP Process that they have not been selected.

(b) After the Title Transfer 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 debriefing.

## **SECTION 10 - DEFINITIONS AND INTERPRETATION**

### **10.1 General**

(a) Unless otherwise defined herein, capitalized terms and expressions used in this RFP have the meaning given to them in the Agreement of Purchase and Sale. In this RFP, the singular shall include the plural and the plural shall include the singular, except where the context otherwise requires.

(b) All references in this RFP to the Sponsors' "**discretion**" or "**sole discretion**" means in the sole and absolute discretion of the party exercising the discretion.

(c) 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.

## 10.2 Definitions

- (a) “**Acquiree**” is defined in RFP Section 3.6(a).
- (b) “**Acquirer**” is defined in RFP Section 3.6(a).
- (c) “**Addendum**” or “**Addenda**” means a written addendum to the RFP Documents issued by the Sponsors as set out in RFP Section 3.7.
- (d) “**Affiliate**” means, in respect of any Person, any Person that: (i) directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such first mentioned Person; or (ii) is an affiliate of the first mentioned Person as that term is defined in the *Business Corporations Act* (Ontario) or *Canada Business Corporations Act* (Canada).
- (e) “**Agreement of Purchase and Sale**” refers to the form of agreement attached as Schedule 6 to this RFP.
- (f) “**Applicable Laws**” is defined in Section 1.1 of the Agreement of Purchase and Sale.
- (g) “**Assembled Lands**” is defined in RFP Section 1.1(c).
- (h) “**Assignment of TPLC Option Agreement**” refers to the form of agreement attached as Schedule “O” to the Agreement of Purchase and Sale.
- (i) “**Background Information**” means various types of information provided by the Sponsors and is defined in RFP Section 2.4(a).
- (j) “**Brookfield**” is defined in RFP Section 3.3(2)(d).
- (k) “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario, Easter Monday, Remembrance Day, or any day on which banks are not open for business in the city of Toronto, Ontario.
- (l) “**Change in Control**” means, with respect to a Proponent, a change in the Person or group of Persons or any combination thereof, which Controls, directly or indirectly, the Proponent such that another Person or group of Persons or any combination thereof, other than Persons which are Affiliates of the Proponent, Controls the Proponent.
- (m) “**Commercially Confidential Meetings**” is defined in RFP Section 3.4(3)(a).
- (n) “**Commercially Confidential RFIs**” is defined in RFP Section 3.2(2)(a)(1)(ii).
- (o) “**Concept Master Plan**” refers to the master concept plan submitted by the Proponents which depicts the proposed redevelopment of the Assembled Lands.
- (p) “**Confidentiality Agreement**” refers to the form of agreement attached as Schedule 8 to this RFP.
- (q) “**Confidential Information**” is defined in RFP Section 3.8(3)(a).

- (r) “**Conflict of Interest**” is defined in RFP Section 3.9(1)(g).
- (s) “**Contact Person**” is defined in RFP Section 1.1(d).
- (t) “**Contract A**” is defined in RFP Section 8.4(a).
- (u) “**Contract B**” is defined in RFP Section 8.4(a).
- (v) “**Contractor**” refers to the entity retained by the RFP Stage 2 Proponent who will supply the labour and materials to build/construct the development as set out in the Proponent’s Concept Master Plan.
- (w) “**Control**” means:
  - (i) with respect to any Person that is a corporation, incorporated or unincorporated association, incorporated or unincorporated syndicate, incorporated or other unincorporated organization, trust or other legal entity which has issued voting securities, the ownership, directly or indirectly, of voting securities of such Person carrying more than 50% of the votes for the election of directors (or individuals performing a similar function or occupying a similar position, including the trustees of a trust);
  - (ii) with respect to any Person that is a trust which has not issued voting securities, control by the trustees of such trust; or a Person who Controls each trustee of such trust and in each case, ownership, directly or indirectly of more than 50% of the beneficial interests in such trust held by Persons that are not charities;
  - (iii) with respect to any Person that is a partnership that does not have directors (or Persons performing a similar function or occupying a similar position) (other than a limited partnership), the ownership directly or indirectly of more than 50% of the interests in such partnership; or
  - (iv) with respect to any Person that is a limited partnership, the Control of each general partner of such limited partnership and the ownership directly or indirectly of more than 50% of the limited partnership interests in such limited partnership,and a Person is Controlled (within the meaning of paragraphs (i) to (iv) of this definition) by a Person when one or more of such first-mentioned Persons are directly or indirectly Controlled (within the meaning of paragraphs (i) to (iv) of this definition) by the second-mentioned Person.
- (x) “**Data Room**” is defined in RFP Section 2.4(a).
- (y) “**Design Team**” means the component of the Proponent’s team that is designated for design development as related to the Proponent’s Concept Master Plan.
- (z) “**Developer**” is defined as a Person who invests in and develops real estate for a commercial and/or residential purpose.

- (aa) **“Evaluation Categories”** is defined in Appendix D of Schedule 3 to this RFP and **“Evaluation Category”** shall be construed accordingly.
- (bb) **“Evaluation Committee”** is defined in RFP Section 6.1(a).
- (cc) **“Existing LCBO Facilities”** or **“Existing LCBO Facility”** refers to the existing LCBO Head Office, Warehouse, and Retail Premises located on the Assembled Lands.
- (dd) **“Fairness Monitor”** is defined in RFP Section 1.3 of the RFP Data Sheet.
- (ee) **“Final Proposal Score”** refers to the sum of the Technical Score and the Financial Score.
- (ff) **“Financial Score”** refers to the number of points achieved by a Proponent in connection with the evaluation of Financial Submission Requirements.
- (gg) **“Financial Submission”** means the component of RFP Stage 1 Proposal or RFP Stage 2 Proposal as submitted in response to the requirements set out in Appendix B1 or Appendix B2, as applicable, of Schedule 3 to this RFP.
- (hh) **“Financial Submission Information”** means the information contained in the Proponents RFP Stage 1 Financial Submission or RFP Stage 2 Financial Submission, as applicable.
- (ii) **“Financial Submission Requirements”** means the minimum requirements relating to the Financial Submission set out in Appendices B1 and B2 of Schedule 3 to this RFP.
- (jj) **“FIPPA”** is defined in RFP Section 3.8(1)(a).
- (kk) **“General Proponents’ Meeting”** is defined in RFP Section 3.4(1)(a).
- (ll) **“General RFIs”** is defined in RFP Section 3.2(2)(a)(1)(i).
- (mm) **“Ground Lease”** refers to the form of agreement attached as Schedule “G” of the Agreement of Purchase and Sale.
- (nn) **“includes”** and **“including”** means **“includes without limitation”** and **“including without limitation”** respectively.
- (oo) **“Ineligible Persons”** is defined in RFP Section 3.9(2)(a).
- (pp) **“Ineligible Person’s Affiliate”** is defined in RFP Section 3.9(2)(a).
- (qq) **“Infrastructure Ontario”** or **“IO”** are defined in RFP Section 1.1(a).
- (rr) **“Land Development Approvals”** is defined in Section 1.1 of the Agreement of Purchase and Sale.
- (ss) **“Land Use Regulations”** is defined in Section 1.1 of the Agreement of Purchase and Sale.

- (tt) “**LBBR**” refers to Landlord Base Building Requirements.
- (uu) “**LCBO**” is defined in RFP Section 1.1(a).
- (vv) “**LCBO Lands**” means the lands and premises currently owned by LCBO shown as Parts 1, 2, 3, and 4 on the LCBO Plan of Survey.
- (ww) “**LCBO Office Premises**” is defined in Section 1.1 of the Agreement of Purchase and Sale.
- (xx) “**LCBO Office Lease**” refers to the form of agreement attached as Schedule “E” of the Agreement of Purchase and Sale.
- (yy) “**LCBO Plan of Survey**” is defined in the Agreement of Purchase and Sale and attached as Schedule C thereto.
- (zz) “**LCBO Purchased Lands**” is defined in Section A. a) of Appendix A to Schedule 1 of this RFP.
- (aaa) “**LCBO Retail Lease**” refers to the form of agreement attached as Schedule “F” of the Agreement of Purchase and Sale.
- (bbb) “**LCBO Retail Premises**” is defined in Section 1.1 of the Agreement of Purchase and Sale.
- (ccc) “**Litigation**” refers to an action in the courts, an arbitration, or other formal dispute resolution proceeding brought by or against the Proponent, either directly or indirectly through another party (e.g. a service provider or related party), by, against or involving LCBO, Infrastructure Ontario on behalf of itself and/or acting as agent for Her Majesty the Queen in the Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure as represented by Infrastructure Ontario, or Ontario Realty Corporation, Ontario Infrastructure Projects Corporation, or the Stadium Corporation of Ontario Limited acting on behalf of themselves respectively or as agent to Her Majesty the Queen in Right of Ontario, for:
- (i) any matter involving the provision of goods or services, including construction and consulting services;
  - (ii) any matter involving the disposition, acquisition or leasing of real property; or
  - (iii) any matter arising from Infrastructure Ontario or any of its predecessor corporations’ exercise of their powers, duties or functions under applicable legislation and policies,
- and includes:
- (iv) any action(s) that have been completed where the full amount of damages payable by way of settlement or court order have been paid;

- (v) any action(s) that have been completed where the full amount of damages payable by way of settlement or court order have not been fully paid; and
- (vi) any actions that remain ongoing in the courts, through arbitration, or other formal dispute resolution proceeding.
- (ddd) **“Negotiations Period”** is defined in RFP Section 1.2(a)(3).
- (eee) **“Negotiations Process”** is defined in RFP Section 1.1(b).
- (fff) **“Negotiations Proponent(s)”** is defined in RFP Section 1.1(b).
- (ggg) **“Negotiations Protocol Agreement”** refers to the form of agreement attached as Schedule 11 to this RFP.
- (hhh) **“New LCBO Facilities”** has the same meaning as **“New Premises”** which is defined in Section 1.1 of the Ground Lease.
- (iii) **“New LCBO Facilities Design Presentation”** is defined in RFP Section 3.4(2)(a).
- (jjj) **“Office Development Lands”** is defined in Section 1.1 of the Ground Lease.
- (kkk) **“Person”** means an individual, a partnership, a corporation, a trust, an unincorporated organization, a government (including, for greater certainty, municipal government) or any department or agency thereof and the successors and assigns thereof or the heirs, executors, administrators or other legal representatives of an individual.
- (lll) **“PM Service Provider”** as defined in Section 3.B.(a) of Appendix A to Schedule 3.
- (mmm) **“Price Form(s)”** refers to either RFP Stage 1 Price Form or RFP Stage 2 Price Form, as applicable.
- (nnn) **“Proponent”** is defined in RFP Section 1.1(b).
- (ooo) **“Proponent Design Consultations”** is defined in RFP Section 3.4(3)(a)(2).
- (ppp) **“Proposal”** refers to either RFP Stage 1 Proposal or RFP Stage 2 Proposal.
- (qqq) **“Proposal Information”** is defined in RFP Section 3.8(4)(d).
- (rrr) **“Proposal Information Licence”** is defined in RFP Section 3.8(4)(e).
- (sss) **“Proposed Change in RFP Stage 2 Proponent”** is defined in RFP Section 3.6(c).
- (ttt) **“Purchaser”** is defined in RFP Section 1.1(b).
- (uuu) **“Reserve Stage 2 Proponent”** is defined in RFP Section 8.4(b)(5).
- (vvv) **“Reserved Negotiations Proponent”** is defined in RFP Section 6.3(6)(c).

- (www) “**RFI(s)**” is defined in RFP Section 2.2(b).
- (xxx) “**RFP**” is defined in RFP Section 1.1(a).
- (yyy) “**RFP Data Sheet**” means Schedule 1 to this RFP.
- (zzz) “**RFP Documents**” is defined in RFP Section 2.1(a).
- (aaaa) “**RFP Main Body**” refers to the front end of the RFP Documents (excluding any Schedules to the RFP).
- (bbbb) “**RFP Process**” is defined in RFP Section 1.2(a).
- (cccc) “**RFP Stage 1**” refers to the stage of the RFP Process described in RFP Section 1.2(a)(1).
- (dddd) “**RFP Stage 1 Proponent**” is defined in RFP Section 1.1(b).
- (eeee) “**RFP Stage 1 Proposal**” is defined in RFP Section 1.1(b).
- (ffff) “**RFP Stage 2**” refers to the stage of the RFP Process described in RFP Section 1.2(a)(2).
- (gggg) “**RFP Stage 2 Proposal**” is defined in RFP Section 1.1(b).
- (hhhh) “**RFP Stage 2 Proponent**” is defined in RFP Section 1.1(b).
- (iiii) “**RFP Stage 2 Proponent Design Consultations**” is defined in RFP Section 3.4(4)(a).
- (jjjj) “**Scheduled Site Visit(s)**” is defined in RFP Section 3.5(b) and refers to a visit to the existing site of the LCBO lands located at 55 Lakeshore Blvd. East, Toronto, Ontario.
- (kkkk) “**Schedules**” refers to the schedules and attachments to the RFP Main Body.
- (llll) “**Signing Parties**” is defined in RFP Section 1.1(e).
- (mmmm) “**Site Development Provisions**” refers to Schedule “K” of the Agreement of Purchase and Sale.
- (nnnn) “**Sponsors**” is defined in RFP Section 1.1(a).
- (oooo) “**Subconsultants**” includes but is not limited to subconsultants or subcontractors retained by the Proponent, including the Contractor.
- (pppp) “**Submission Deadline**” is defined in RFP Section 3.1(a).
- (qqqq) “**Submission Requirements**” means all of the submission requirements set out in this RFP.

- (rrrr) “**Technical Score**” refers to the number of points achieved by a Proponent in connection with the evaluation of Technical Submission Requirements.
- (ssss) “**Technical Submission**” means the component of RFP Stage 1 Proposal or RFP Stage 2 Proposal as submitted in response to the requirements set out in Appendix A of Schedule 3 to this RFP.
- (tttt) “**Technical Submission Information**” means the information contained in the Proponents RFP Stage 1 Technical Submission or RFP Stage 2 Technical Submission, as applicable.
- (uuuu) “**Technical Submission Requirements**” means the minimum requirements relating to the Technical Submission set out in Appendix A of Schedule 3 to this RFP.
- (vvvv) “**Timetable**” is defined in RFP Section 3.1(a).
- (wwww) “**Title Transfer Date**” means the “**Closing Date**” as the term is defined in Section 1.1 of the Agreement of Purchase and Sale.
- (xxxx) “**TPLC**” is defined in RFP Section 1.1(c).
- (yyyy) “**TPLC Option Agreement**” refers to Schedule “N” of the Agreement of Purchase and Sale.
- (zzzz) “**TPLC Rail Spur Lands**” is defined in Section 1.1 of the Agreement of Purchase and Sale.
- (aaaa) “**Transaction**” is defined in RFP Section 1.1(a).
- (bbbb) “**Transaction Agreements**” consists of the Agreement of Purchase and Sale which is Schedule 6 to this RFP, and certain schedules thereto including the Assignment of TPLC Option Agreement, the LCBO Ground Lease, the LCBO Office Lease, the Site Development Provisions, and the LCBO Retail Lease.
- (cccc) “**Upfront Payment**” refers to the fee set out in Section 2 in the Price Forms.

