

**Ontario Place Development
Process to Seek Development Concepts**

Process Participant Form

All capitalized terms used in this Process Participant Form are defined in the Glossary of Terms in “Schedule A: Terms and Conditions”.

The Process to Seek Development Concepts for the Ontario Place Site is governed by the terms and conditions set out in this Process Participant Form.

In order to participate in the Process to Seek Development Concepts each Participant must complete and execute and return to Infrastructure Ontario the declarations and confirmation set out below in this Process Participant Form and the Non-Disclosure Agreement set out in “Schedule B: Non-Disclosure Agreement” hereto (together the “**Executed Process Participant Form**”) and agree to be bound by the terms and conditions of the Process to Seek Development Concepts set out herein.

Where a team of individuals, corporations, partnerships or other legal entities are working together to develop, prepare and/or submit a Submission, each individual, corporation, partnership and/or legal entity forming the team must each return their own Executed Process Participant Form to Infrastructure Ontario as a Participant.

(i) Participant Information (if a corporation, partnership or other legal entity other than an individual)	
Company Name:	
Full Name and Title of Contact Person for Participant:	
Address:	
Telephone Number:	
Company Website (URL):	
Telephone Number for Contact Person:	
Email Address for Contact Person:	
(i) Participant Information (if an individual)	
Full Name:	

Address:	
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Telephone Number:	
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Email Address:	
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(ii) Conflicts of Interest Declaration Form

The Participant hereby declares that, except as described below, (i) it (whether an individual or corporation or partnership or other legal entity) and, where applicable, (ii) its officers, directors, partners or employees, has no actual or potential Conflict of Interest in respect of the Process to Seek Development Concepts for the Ontario Place Site.

Entity/Person with Conflict of Interest (specify name and title, or indicate n/a)	Description of Conflict of Interest (specify whether actual or potential and explain the conflict of interest attaching additional pages if necessary, or indicate n/a)

(iii) Restricted Persons Declaration

The Participant hereby declares that, except as is described below, neither it (whether an individual or corporation or partnership or other legal entity) nor, where applicable, (ii) any of its officers, directors, partners or employees, is a Restricted Person.

Restricted Person (specify name and title, or indicate n/a)	Description (explain why the individual listed is a Restricted Person attaching additional pages if necessary, or indicate n/a)

(iv) Litigation Declaration

The Participant hereby declares that, except as described below, neither it (whether an individual or corporation or partnership or other legal entity) nor, where applicable, (ii) any of its officers, directors, partners or employees, or any entity related to the Participant (whether an individual or corporation or partnership or other legal entity) or, where applicable, (ii) to any of its officers, directors, partners or employees, is involved in any adverse claim or proceeding (i) against the Province of Ontario or (ii) which, if resolved against such party, would have a material adverse effect on the ability of the Participant to participate in the Process to Seek Development Concepts and/or to implement the development concept contemplated by its Submission.

Description

(describe any claims or proceedings attaching additional pages if necessary, or indicate n/a)

CONFIRMATION:

The Participant hereby confirms that:

- (i) it has read and agrees to be bound by the terms and conditions of the Process to Seek Development Concepts as set out in this Process Participant Form; and
- (ii) the Participant's Executed Process Participant Form contains no misrepresentations or any other inaccurate, misleading or incomplete information; and
- (iii) the Participant's Submission, if any, will contain no misrepresentations or any other inaccurate, misleading or incomplete information.

If a corporation, partnership or other legal entity other than an individual:

Per: _____ Name: Title: I have authority to bind the corporation	Date:
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If an individual:

_____ Signature of Participant	Name: Date:
_____ Signature of Witness	Name: Date:

Schedule A: Terms and Conditions

The Process to Seek Development Concepts is the process whereby the Province of Ontario is seeking Submissions of development concepts for the Ontario Place Site. The Process to Seek Development Concepts began with the activation of the project website www.Ontario.ca/OntarioPlaceDevelopment on January 18, 2019 for the Early Engagement Opportunity Stage (which has now concluded) and will end at the conclusion of the Call for Development Stage.

The Process to Seek Development Concepts is governed by the terms and conditions set out in the Process Participant Form (as defined in the Glossary of Terms).

For clarity, Participants who completed a Submission as part of the Early Engagement Opportunity Stage will not be required to re-submit once the Call for Development Stage is launched but will be permitted to augment their Submission, if desired.

All capitalized terms used in this Process Participant Form are defined in the Glossary of Terms in this "Schedule A: Terms and Conditions".

1. Not a Binding Process nor a Formal Competitive Bidding Process

- (a) The Process to Seek Development Concepts is governed by the terms and conditions set out in this Process Participant Form. It is not a legally-binding procurement process and except as expressly specified in the Process Participant Form, there will be no legal relationship or obligations created hereunder for the Province.
- (b) The Process to Seek Development Concepts shall be governed by the law of the Province of Ontario and the federal laws of Canada applicable in the province of Ontario.
- (c) For greater certainty and without limiting anything else set out in this Process Participant Form:
 - (i) This Process to Seek Development Concepts is not a procurement or tender process and shall not be construed as such;
 - (ii) this Process to Seek Development Concepts shall not give rise to any tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
 - (iii) the Participant shall have no right to make any claims (in contract, tort, or otherwise) against the Province with respect to the award of a contract, failure to award a contract, or failure by the Province to honour any provision of the Process to Seek Development Concepts or any response thereto.
- (d) Notwithstanding the use of the term "Partner" or "Partners" or "partnership" in this Process Participant Form or the Process to Seek Development Concepts Document, neither this Process Participant Form nor the Process to Seek Development Concepts Document nor the process contemplated herein shall constitute or give rise to a partnership or any other form of joint venture between any Participant and the Province.
- (e) In order to participate in the Process to Seek Development Concepts each Participant must complete and execute and return to Infrastructure Ontario the declarations and confirmation set out in this Process Participant Form and the Non-Disclosure Agreement set out in "Schedule B: Non-Disclosure Agreement" hereto (together the "**Executed Process Participant Form**") and agree to be bound by the terms and conditions of the Process to Seek Development Concepts set out herein.

- (f) Unless otherwise terminated by Infrastructure Ontario, the terms and conditions set out in the Process Participant Form shall continue in full force indefinitely. All obligations created by the Process Participant Form shall survive any change or termination of the Process to Seek Development Concepts or any resulting business relationship between the Participant and the Province.

2. General Rights of the Province

- (a) The Province may disqualify any Participant if such Participant's Executed Process Participant Form, Submission or any other information or response to this Process to Seek Development Concepts contains misrepresentations or any other inaccurate, misleading or incomplete information, as determined by the Province in its sole and absolute discretion.
- (b) The Province's assessment of a Participant's Executed Process Participant Form, Submission or any other information or response to this Process to Seek Development Concepts may take into consideration information obtained through the due diligence efforts of the Province, including information provided by the Participant's references, and may also consider the Participant's past performance on previous dealings with the Province.
- (c) The Province may select multiple Participants to move forward with the Process to Seek Development Concepts, and/or select a Participant for any aspect of the Process to Seek Development Concepts (or any resulting contract entered into between the Participant and the Province), without any liability of any nature or kind whatsoever to any Participant.
- (d) The Province may select a party which did not submit a response to this Process to Seek Development Concepts or whose response did not meet the requirements of this Process to Seek Development Concepts to advance in the process.
- (e) Upon receipt by the Province of any response to this Process to Seek Development Concepts and/or any Submission from a Participant, the Province shall become the owner of all programming, concepts and ideas contained within such response and/or Submission and any accompanying documentation provided by a Participant, and the Province may use and reproduce such programming, concepts and ideas or any parts thereof howsoever the Province may choose without any liability of any nature or kind whatsoever to any Participant.
- (f) The Province reserves the right to modify the terms of this Process to Seek Development Concepts or the process contemplated herein at any time.
- (g) The Province reserves the right to terminate the Process to Seek Development Concepts and may also initiate another process.
- (h) The Province reserves the right to use a different process to select a party to enter into a definitive agreement for the Site, including, without limitation, a competitive process.
- (i) The Province reserves the right to request additional information from any Participant regarding its Executed Process Participant Form and or its Submission and to allow a Participant to supplement or correct elements of its Executed Process Participant Form and or its Submission.
- (j) If, after a Participant has returned to Infrastructure Ontario its Executed Participant Process Form, a Participant wishes to partner with another individual, corporation, partnership or other legal entity in preparing or developing or submitting its Submission (a "**New Partner**"), the Participant agrees and undertakes to ensure that such New Partner shall return to Infrastructure Ontario an Executed Process Participant Form forthwith upon the Participant first seeking to partner with the New Partner. The Participant acknowledges and agrees that in the event that the Participant fails to procure the return to Infrastructure Ontario of the New Partner's Executed Process Participant Form, the Participant shall be responsible for and

liable to the Province for the acts and omissions of, and any breach of the terms and conditions of the Process Participant Form by, the New Partner in respect of this Process to Seek Development Concepts. The Participant further acknowledges and agrees that it shall obtain all requisite consents and agreements from any such New Partner in order for the Participant not to breach its representation and warranty set out in Section 12(a) below and specifically, but not limited to, the Participant's compliance with the obligation for the passing of ownership to the Province of all programming, concepts and ideas contained within a Participant's response to this Process to Seek Development Concepts and/or any Submission from a Participant and any accompanying documentation provided by a Participant.

- (k) All rights of the Province under this Process Participation Form and the Process to Seek Development Concepts may be exercised in its sole and absolute discretion.

3. No Representations

- (a) Neither the Province nor their Advisors make any representations or warranties, either express or implied, in fact or in law, with respect to the accuracy or completeness of any data, materials or other documents and information that it has, or they have provided, or will provide to Participants in writing or orally in connection with this Process to Seek Development Concepts (collectively, "**Background Information**").
- (b) Each Participant shall perform its own due diligence in preparing its Executed Process Participant Form, its Submission and any other information or response to this Process to Seek Development Concepts and shall not be entitled to rely on any Background Information. The Participant represents and warrants that it has carefully examined the Process Participant Form, the Process to Seek Development Concepts Document, the Process to Seek Development Concepts and any addenda and has a clear and comprehensive knowledge of the Process Participant Form, the Process to Seek Development Concepts and the expected contents of a Submission. The onus remains on each Participant to make any necessary amendments to its Submission to reflect the terms of any addenda issued by the Province following the initial version of the Participant Process Form and or the Process to Seek Development Concepts Document and or the Process to Seek Development Concepts.
- (c) Nothing in this Process Participant Form or the Process to Seek Development Concepts Document or this Process to Seek Development Concepts is intended to relieve Participants of their responsibility to form their own opinions and conclusions in respect of the matters addressed in the Process Participant Form or the Process to Seek Development Concepts Document or the Process to Seek Development Concepts and to satisfy themselves independently regarding the accuracy and completeness of the Background Information.
- (d) Each Participant is responsible for obtaining its own independent financial, legal, accounting, engineering, environmental, architectural, and other technical and professional advice with respect to the Process Participant Form, or the Process to Seek Development Concepts, and the Process to Seek Development Concepts Documents and any Submission.
- (e) Without limiting the generality of the foregoing, neither the Province nor their representatives shall be liable for any claim, action, cost, loss, damage, or liability whatsoever arising from or related to any information or advice or any errors or omissions that may be contained in the Process Participation Form, the Process to Seek Development Concepts Document, the Process to Seek Development Concepts or the Background Information.
- (f) If Participants believe that any element of the Process Participant Form or the Process to Seek Development Concepts is unclear or ambiguous, the Participants are responsible for requesting clarification from the Province. The Province shall not be responsible for any misunderstanding on the part of any Participant concerning the Process Participant Form or the Process to Seek Development Concepts.

4. Conflict of Interest

- (a) Each Participant must disclose in its Executed Process Participant Form and in its Submission, and on an ongoing basis thereafter, any Conflict of Interest, real or perceived, that exists now or may exist in the future, with respect to this Process to Seek Development Concepts, any resulting agreement with MTCS and/or other ministries of the Crown, or in relation to the Province or their representatives.
- (b) For the purposes of this section, "Conflict of Interest" includes but is not limited to, any situation or circumstance where:
 - (i) in relation to the Process to Seek Development Concepts, the Participant and, where applicable, any of its officers, directors, partners or employees, has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including, but not limited to (A) having or having access to information in the preparation of its Submission that is confidential to the Province and not available to other Participants; (B) communicating with any person with a view to influencing preferred treatment in the Process to Seek Development Concepts including the giving of a benefit of any kind, by or on behalf of the Participant to anyone employed by, or otherwise connected with, the Province; or (C) engaging in conduct that compromises or could be seen to compromise the integrity of the Process to Seek Development Concepts; or
 - (ii) in relation to the performance of its contractual obligations under any resulting agreement with MTCS and/or other ministries of the Crown, the Participant's other commitments, relationships or financial interests (A) could, or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (B) could, or could be seen to compromise, impair or be incompatible with the effective performance of its contractual obligations; or
 - (iii) the Participant has other commitments, relationships, financial interests or involvement in any litigation or proceeding that could, or could be seen to, exercise an improper influence over the objective, unbiased and impartial exercise of the Province's independent judgment.
- (c) If the Participant needs to declare an actual or potential Conflict of Interest following the submission of the Executed Process Participant Form, the Participant must declare and provide details of such actual or potential Conflict of Interest to info@ontarioplacedevelopment.com. Failure to make such disclosure may result in the immediate disqualification of the Participant.
- (d) The Province may disqualify a Participant for any conduct, situation or circumstances that constitutes a Conflict of Interest, as determined by the Province, in their sole and absolute discretion. The final determination of whether a perceived, potential or actual Conflict of Interest exists shall be made by the Province, in their sole and absolute discretion.
- (e) Without limiting the foregoing, the Province may, at their discretion, waive any and all perceived, potential or actual Conflicts of Interest.

5. Confidentiality

- (a) All information provided by or obtained from the Province in any form in connection with the Process to Seek Development Concepts, either before or after the issuance of the Process to Seek Development Concepts:
 - (i) is the sole property of the Province and must be treated as confidential;

- (ii) is not to be used for any purpose other than to respond to this Process to Seek Development Concepts and to perform obligations under any resulting agreement with MTCS and/or other ministries of the Crown; and
 - (iii) must not be disclosed without prior written authorization from the Province.
- (b) Each Participant acknowledges and agrees that in order to participate in this Process to Seek Development Concepts they must execute and be bound by and return to Infrastructure Ontario the Non-Disclosure Agreement set out in “Schedule B: Non-Disclosure Agreement” which, once executed, forms part of the Participant’s Executed Process Participant Form.

6. No Public Communications

- (a) No Participant shall make any public comment, respond to questions in a public forum, or carry out any activities to publicly promote or advertise their qualifications, interest in or participation in the Process to Seek Development Concepts, or a Submission, without the Province’s prior written consent, which consent may be arbitrarily withheld or delayed in the sole and absolute discretion of the Province.

7. Submissions Property of the Province

- (a) All Submissions and any accompanying documentation provided by a Participant shall become the property of the Province and shall not be returned.

8. Participants to Bear Own Costs

- (a) All costs and expenses incurred by each Participant in the preparation and delivery of its Executed Process Participant Form and its Submission, or in providing any additional information necessary for the assessment of its Executed Process Participant Form and its Submission, shall be borne solely by that Participant.

9. Restricted Persons

- (a) The Province may, in its sole discretion, disqualify a Participant if the Participant, or where applicable, any of its officers, directors, partners or employees, is a Restricted Person. For the purposes of this section, “Restricted Person” shall mean:
 - (i) a person or entity that has, as its primary business, the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (ii) an individual who, or in the in the case of a person other than an individual, it or any of its officers, directors, partners or employees who:
 - a. has or have been convicted of any indictable offence less than five years prior to the date of the issuance of the Process to Seek Development Concepts; or
 - b. has or have been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the Highway Traffic Act (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date of the issuance of the Process to Seek Development Concepts;
 - (iii) a person or entity that has, as its primary business, the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (iv) a person or entity that is involved in litigation or contemplated litigation (including regulatory proceedings) which have been concluded or are pending at the time of

the date of the issuance of the Process to Seek Development Concepts, involving the Province; and

- (v) any person or entity who is prohibited from doing business with the federal government pursuant to the Integrity Regime administered by Public Services and Procurement Canada.
- (b) Each Participant is required to disclose in its Executed Process Participant Form and in its Submission, and on an ongoing basis, if the Participant, or where applicable, any of its officers, directors, partners or employees, is or are now or may become in the future, a Restricted Person. Failure to make such disclosure may result in immediate disqualification from the Process to Seek Development Concepts, in the sole and absolute discretion of the Province.
- (c) If the Participant needs to disclose a Restricted Person following the submission of the Executed Process Participant Form, the Participant must disclose and provide details of such Restricted Person to info@ontarioplacedevelopment.com. Failure to make such disclosure may result in immediate disqualification from the Process to Seek Development Concepts, in the sole and absolute discretion of the Province.

10. Power of Legislative Assembly

- (a) No provision of this Process to Seek Development Concepts (including a provision stating the intention of the Province) is intended to operate, nor shall any such provision have the effect of operating, in any way, so as to interfere with or otherwise fetter the discretion of the Legislative Assembly of Ontario in the exercise of its legislative powers.

11. Freedom of Information, Protection of Privacy & Other Disclosure Requirements

- (a) The Province may be required to disclose the Process Participant Form, the Process to Seek Development Concepts Document, the Process to Seek Development Concepts, certain documents, and/or all or parts of any Submission or any response to the Process to Seek Development Concepts pursuant to the *Freedom of Information and Protection of Privacy Act* (Ontario) ("FIPPA").
- (b) FIPPA may provide protection for confidential and proprietary business information. Participants 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 Executed Process Participant Form, Submission and any other responses to the Process to Seek Development Concepts.
- (c) Subject to the provisions of FIPPA, in connection with a request under FIPPA, the Province will use commercially reasonable efforts to safeguard the confidentiality of any information identified by the Participant as confidential but shall not be liable in any way whatsoever to any Participant if such information is disclosed based on an order or decision of the Information and Privacy Commissioner or otherwise as required under applicable law.

12. Participant's Representation and Warranty and Indemnity

- (a) The Participant hereby represents and warrants to the Province that the Participant has all the requisite power and authority to:
 - (i) execute the Executed Process Participant Form; and
 - (ii) perform and fulfil all of its obligations under this Process Participant Form.
- (b) The Participant agrees to indemnify and save the Province harmless from any and all claims, damages and losses arising out of or relating to:

- (i) any breach of the terms and conditions of this Process Participant Form by the Participant or by any New Partner that has not returned an Executed Process Participant Form to Infrastructure Ontario; or
 - (ii) any breach of a representation or warranty by the Participant in this Process Participant Form.
- (c) In the event of a breach or threatened breach of any of the terms and conditions of this Process Participant Form or of any representation or warranty by the Participant in this Process Participant Form, the Participant acknowledges and agrees that monetary damages would not be a sufficient remedy for any such breach and that the Province shall be entitled to equitable relief, including without limitation an injunction and specific performance, as a remedy for any such breach or other appropriate remedy, in addition to any other rights or remedies the Province may have and the Participant agrees not to oppose same.

Glossary of Terms

The definitions set out in this Glossary of Terms apply to all terms used in the Process to Seek Development Concepts, including for clarity the Early Engagement Opportunity Stage and the Call for Development Stage.

Advisor: means any individual or firm retained by MTCS or Infrastructure Ontario, directly or indirectly, to assist with the Process to Seek Development Concepts

Background Information: has the meaning given to it in Section 3(a).

Call for Development Stage: means the part of the Process to Seek Development Concepts from the conclusion of the Early Engagement Opportunity Stage until the conclusion of the Call for Development Stage. The conclusion of the Call for Development Stage shall be the conclusion of the Process to Seek Development Concepts. The Call for Development Stage was referred to as the Expression of Interest Stage during the Early Engagement Opportunity Stage.

Call for Development Stage Document: means any document or documents issued by or on behalf of the Province during and in connection with the Call for Development Stage. The Call for Development Stage Document was referred to as the Expression of Interest Stage Document during the Early Engagement Opportunity Stage.

Conflict of Interest: has the meaning given to it in Section 4(b).

Early Engagement Opportunity Stage: means the part of the Process to Seek Development Concepts that was from the activation of the project website www.Ontario.ca/OntarioPlaceDevelopment on January 18, 2019 to the launch of the Call for Development Stage on May 28, 2019.

Executed Process Participant Form: has the meaning given to it in Section 1(e).

Expression of Interest Stage: means the Call for Development Stage.

Expression of Interest Stage Document: means the Call for Development Stage Document.

FIPPA: means Ontario's *Freedom of Information and Protection of Privacy Act*, as may be amended from time to time.

Infrastructure Ontario: means Ontario Infrastructure and Lands Corporation, an agency of the Government of Ontario.

MTCS: means Her Majesty the Queen in right of Ontario as represented by the Minister of Tourism, Culture and Sport.

New Partner: has the meaning given to it in Section 2(j).

Non-Disclosure Agreement: means the non-disclosure agreement set out in "Schedule B: Non-Disclosure Agreement" to the Process Participant Form which, when executed, forms part of the Participant's Executed Process Participant Form.

Participant: means the party (whether an individual, corporation, partnership or other legal entity) who executed an Executed Process Participant Form.

Process Participant Form: means any version of the Process Participant Form and includes "Schedule A: Terms and Conditions" and "Schedule B: Non-Disclosure Agreement".

Process to Seek Development Concepts: means the process whereby the Province of Ontario is seeking Submissions of development concepts for the Ontario Place Site. The Process to Seek Development Concepts has two stages: the Early Engagement Opportunity Stage and the Call for Development Stage. The Process to Seek Development Concepts is governed by the terms and conditions set out in the Process Participant Form.

Process to Seek Development Concepts Document: means the Process Participant Form and any documents issued or disclosed by or on behalf of the Province during the Process to Seek Development Concepts including the Call for Development Stage Document and the Background Information.

Province or Province of Ontario: means any or all of Infrastructure Ontario and MTCS and any successor ministry and/or additional ministry or ministries thereto, collectively or individually as the context requires.

Restricted Person: has the meaning given to it in Section 9(a).

Site: means any or all portions of the Ontario Place property (excluding at this time the portion of the property under lease to Live Nation Entertainment), including the islands and mainland, the pods, the Cinesphere, the marinas and surrounding water areas, as presented in Figure 2 of the "Summary Memo of Site and Technical Information" provided as Background Information in the electronic data room.

Submission: means a written response to this Process to Seek Development Concepts that proposes a development concept.

Schedule B: Non-Disclosure Agreement

[NOTE: To be executed by each Participant and returned to Infrastructure Ontario as part of its Executed Process Participant Form. The Executed Process Participant Form is required in order for a Participant to be able to participate in this Process to Seek Development Concepts.

Where a team of individuals, corporations, partnerships or other legal entities are working together to develop or prepare and/or submit a Submission, each individual, corporation, partnership and/or legal entity forming the team must each return their own Executed Process Participant Form to Infrastructure Ontario as a Participant.]

Date: _____

Ontario Infrastructure and Lands Corporation

1 Dundas Street West, 22nd Floor
Toronto, Ontario
M5G 1Z3

Attention: Craig Lorentz

Subject: Non-Disclosure Agreement – Ontario Place, Toronto, Canada

Dear Sir:

In connection with the Participant's participation in the Process to Seek Development Concepts for the Site being undertaken by Ontario Infrastructure and Lands Corporation ("**Infrastructure Ontario**") on behalf of Her Majesty the Queen in right of Ontario as represented by the Minister of Tourism, Culture and Sport ("**MTCS**") and any successor ministry and/or additional ministry or ministries thereto, (Infrastructure Ontario and MTCS and any successor ministry and/or additional ministry or ministries thereto, collectively or individually, being the "**Province**") Infrastructure Ontario and/or the Advisor may furnish to the Participant Confidential Information. Except as otherwise provided in this Non-Disclosure Agreement, defined terms have the meanings attributed in the Process Participant Form and the Glossary of Terms attached thereto.

1. Definitions

- (a) "**Affiliate**" means any entity that is related to, under the control of or under common control with the Participant including, but not limited to, any New Partner that has not returned to Infrastructure Ontario an Executed Process Participant Form.
- (b) "**Confidential Information**" means any information about the Site, the Province or the Process to Seek Development Concepts furnished by the Province or the Advisor to the Participant and its Representatives, whether in oral, written or electronic form, including without limitation, all reports, plans, financial statements, budgets, surveys, drawings, documents, contracts, tenant information, technical and economic data, engineering reports, environmental reports, marketing information, analyses, compilations, forecasts and studies prepared by me/us incorporating such information. The term "Confidential Information" does not include information which is (i) information that is disclosed in legal proceedings between or involving one or more of the parties hereto or, where a party is a corporation, its shareholders; (ii) public information or information in the public domain at the time of receipt by the Participant; (iii) information which becomes public through no fault or act of the Participant; (iv) information in the possession of the Participant not provided by the Province or its Advisors and not subject to an obligation of non-disclosure; (v) information required to be disclosed by applicable laws or by the regulations, rules or policies of any applicable regulatory body or public stock exchange, but in such case such party shall notify the other

party prior to making such disclosure and, to the extent possible, shall take into account the comments of the other party in respect of such disclosure; or (vi) information received in good faith from a third party lawfully in possession of the information and not known to be in breach of any confidentiality obligations. "Confidential Information" shall also include the fact that the Participant has received Confidential Information and the fact that the Participant is considering participating in the Process to Seek Development Concepts.

- (c) **"Participant"** means the party (whether an individual, corporation, partnership or other legal entity) who has executed this Non-Disclosure Agreement which, when executed, forms part of the Participant's Executed Process Participant Form.
- (d) **"Representatives"** mean agents, clients, investors, bankers and financial advisors, attorneys, accountants and professional consultants, shareholders, third party lenders, officers, directors, employees, potential investors and other advisers retained by the Participant in connection with the Process to Seek Development Concepts.

2. Miscellaneous

The Participant represents and warrants that the Participant has a bona fide interest in delivering a response to this Process to Seek Development Concepts. The Participant acknowledges that execution and delivery of this non-disclosure agreement (the "Agreement") shall not give rise to any entitlement in favour of the Participant to access the electronic data room containing Confidential Information and that Infrastructure Ontario and the Advisor reserve the right to deny or terminate access to such data room at any time in their sole and absolute discretion.

3. Non-Disclosure

The Participant agrees that the Participant will hold in confidence and not disclose the Confidential Information except (i) in accordance with this Agreement; (ii) as may be required by law; and (iii) to the Participant's officers, directors and employees, and those of its Affiliates and Representatives who have agreed in writing to be bound by the terms of this Agreement. Except with the prior written consent of the Province, the Participant will not, nor will the Participant permit any of the Participant's Affiliates or Representatives to: (i) use any Confidential Information other than for the purpose of evaluating and participating in the Process to Seek Development Concepts; (ii) disclose any Confidential Information to any person, other than in accordance with this Agreement; (iii) disclose the fact that any Confidential Information has been made available by the Province to any Participant or a Participant's Affiliates or Representatives; or (iv) disclose the occurrence of the sharing of the Confidential Information for the purposes of the Process to Seek Development Concepts.

4. Notice

If the Participant or any person to whom the Participant has provided any Confidential Information in accordance with this Agreement is requested pursuant to any legal process to disclose any of the Confidential Information, the Participant will provide the Province and the Advisor prior written notice to such effect and at the request of the Province or the Advisor will co-operate with Infrastructure Ontario in seeking injunctive relief or other appropriate remedy against the disclosure of such Confidential Information.

5. Breach

The Participant shall be responsible for any breach of this Agreement by the Participant or by any of the Participant's Affiliates or Representatives. In the event of a breach or threatened breach of this Agreement, the Participant acknowledges and agrees that monetary damages would not be a sufficient remedy for any breach of this Agreement and that the Province shall be entitled to equitable relief, including without limitation an injunction and specific performance, as a remedy for any such breach or other appropriate remedy, in addition to any other rights or remedies the Province may have and the Participant agrees not to oppose same.

6. Indemnify and Save Harmless

The Participant agrees to indemnify and save the Province harmless from any and all claims, damages and losses arising out of or relating to a breach of the terms and conditions of this Agreement by the Participant, its Affiliates and/or its Representatives.

7. Survival

Unless otherwise terminated by Infrastructure Ontario, this Agreement shall continue in full force indefinitely. All obligations created by this Agreement shall survive any change or termination of the Process to Seek Development Concepts or any resulting business relationship between the Participant and the Province.

8. Return or Destruction of Confidential Information

- (a) Upon termination of the Participant's participation in the Process to Seek Development Concepts, or such earlier time as Infrastructure Ontario or the Advisor may request, the Participant agrees to return all Confidential Information to Infrastructure Ontario, including copies of documents and extracts of Confidential Information produced by the Participant or the Participant's Affiliates and Representatives, and the Participant further agrees that the Participant will return to Infrastructure Ontario or cause to be destroyed all other documents in the Participant's possession or in the possession of the Participant's Affiliates or Representatives containing Confidential Information.
- (b) All Confidential Information permanently deleted or destroyed in accordance with this Section 8 shall be completed within 5 business days after the termination of the Participant's participation in the Process to Seek Development Concepts and the Participant shall provide a certificate to the Province certifying such deletion or destruction.
- (c) Notwithstanding the return or destruction of the Confidential Information, the Participant agrees to continue to be bound by the Participant's obligations of confidentiality and other obligations hereunder.

9. Representations and Warranties

The Participant understands and acknowledges that neither the Advisor nor Province makes any representations or warranties, express or implied, regarding the Site or the Confidential Information, including with respect to the accuracy or completeness of the Confidential Information. The Participant agrees that neither the Province nor the Advisor shall have any liability to the Participant or to the Participant's Affiliates or Representatives relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom.

10. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. All rights, entitlements, duties, and obligations arising herein shall enure to the benefit of and be binding upon the Participant, the Province and their respective successors and permitted assigns. The Participant understands and acknowledges that the Advisor can act as the representative of Infrastructure Ontario. This Agreement may be executed by facsimile/electronic transmission.

Yours very truly,

If a corporation, partnership or other legal entity other than an individual:

Per: _____ Name: Title: I have authority to bind the corporation	Date:
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If an individual:

_____ Signature	Name: Date:
_____ Signature of Witness	Name: Date: