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# **Alliance Development Agreement**

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**GO Expansion – Union Station Enhancement Project**

**RFP No.: 19-190**

## CONTENTS

<b>1</b>	<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>2</b>
1.1	Definitions .....	2
1.2	Interpretation .....	17
1.3	Business Day .....	18
1.4	Ambiguities and inconsistencies .....	18
1.5	Relationship to Project Alliance Agreement .....	19
<b>2</b>	<b>PURPOSE AND SCOPE OF AD PHASE</b> .....	<b>19</b>
2.1	Purpose and scope .....	19
2.2	Performance of Early Works by Owner .....	19
2.3	Release by NOPs .....	20
2.4	Owner liability .....	20
2.5	Application to site investigations .....	20
2.6	Rail corridor access .....	20
<b>3</b>	<b>COMMITMENTS</b> .....	<b>20</b>
3.1	Alliance principles .....	20
3.2	Good Faith .....	21
3.3	Open book commitment .....	21
3.4	Commitment to “no-blame” culture .....	22
3.5	AD Participants’ obligations .....	22
3.6	Changes to personnel .....	22
3.7	Sub-Contracting .....	22
3.8	Supply chain protection .....	23
<b>4</b>	<b>ALLIANCE LEADERSHIP TEAM</b> .....	<b>23</b>
4.1	Establishment and composition .....	23
4.2	ALT meetings .....	24
4.3	Attendance of Third Parties at ALT meetings .....	25
4.4	Attendance of an alliance facilitator at ALT meetings .....	26

4.5	<b>ALT decisions must be unanimous</b> .....	26
4.6	<b>Implementing ALT decisions</b> .....	26
4.7	<b>Consultation with others</b> .....	26
4.8	<b>Disclosure of conflict of interest</b> .....	27
<b>5</b>	<b>RESOLUTION OF ISSUES</b> .....	<b>27</b>
5.1	<b>General</b> .....	27
5.2	<b>Referral to ALT</b> .....	27
5.3	<b>Adjudication</b> .....	28
5.4	<b>Parties to continue to perform</b> .....	28
5.5	<b>Survival of Section 5</b> .....	28
<b>6</b>	<b>ALLIANCE MANAGEMENT TEAM</b> .....	<b>29</b>
6.1	<b>Appointment of the Alliance Director</b> .....	29
6.2	<b>Membership of the AMT</b> .....	29
6.3	<b>Owner Participant may nominate AMT representatives</b> .....	29
6.4	<b>AD Participants to ensure continuity of membership of the AMT</b> .....	29
6.5	<b>Functions of the AMT</b> .....	30
<b>7</b>	<b>ALLIANCE PROJECT TEAM</b> .....	<b>30</b>
7.1	<b>Membership of the APT</b> .....	30
7.2	<b>Owner Participant may nominate APT representatives</b> .....	30
7.3	<b>AD Participants to ensure continuity of membership of the APT</b> .....	30
7.4	<b>Functions of the APT</b> .....	30
<b>8</b>	<b>PROJECT OFFICE</b> .....	<b>31</b>
8.1	<b>Provision of Project Office</b> .....	31
<b>9</b>	<b>OWNER'S REPRESENTATIVE</b> .....	<b>31</b>
9.1	<b>Distinction between Owner and Owner Participant</b> .....	31
9.2	<b>Owner's Representative</b> .....	31
9.3	<b>Participant assistance to Owner's Representative</b> .....	31
9.4	<b>Exercise of rights by the Owner</b> .....	31

<b>10</b>	<b>TERM</b> .....	<b>32</b>
	<b>10.1 Commencement</b> .....	<b>32</b>
	<b>10.2 Termination</b> .....	<b>32</b>
<b>11</b>	<b>ESTIMATES</b> .....	<b>32</b>
	<b>11.1 Request for Estimate</b> .....	<b>32</b>
	<b>11.2 Estimate</b> .....	<b>32</b>
	<b>11.3 Content of Estimate</b> .....	<b>32</b>
	<b>11.4 Estimate Approval</b> .....	<b>33</b>
	<b>11.5 Rejection of Estimate</b> .....	<b>33</b>
	<b>11.6 Actual Costs and Fee relating to Estimate</b> .....	<b>34</b>
<b>12</b>	<b>PROPOSAL DEVELOPMENT</b> .....	<b>34</b>
	<b>12.1 Development of Project Proposal</b> .....	<b>34</b>
	<b>12.2 Warranties in respect of the Project Proposal</b> .....	<b>36</b>
	<b>12.3 Development of Early Works Proposals</b> .....	<b>38</b>
	<b>12.4 NOP warranties in respect of Early Works Proposals</b> .....	<b>38</b>
	<b>12.5 Consideration of Early Works Proposals</b> .....	<b>39</b>
	<b>12.6 Decision of the Owner in respect of Early Works Proposals</b> .....	<b>40</b>
	<b>12.7 Consequences of acceptance of an Early Works Proposal</b> .....	<b>40</b>
	<b>12.8 Consequences of rejection of an Early Works Proposal</b> .....	<b>41</b>
	<b>12.9 Scope Variations</b> .....	<b>41</b>
	<b>12.10 Ownership of Project Proposal and Early Works Proposal</b> .....	<b>41</b>
<b>13</b>	<b>PROVISION OF INFORMATION BY THE OWNER AND THE OWNER'S REPRESENTATIVE</b>	<b>41</b>
	<b>13.1 Presentations by Owner's Representative</b> .....	<b>41</b>
	<b>13.2 Type of Information</b> .....	<b>41</b>
	<b>13.3 Warranty for information provided by the Owner</b> .....	<b>42</b>
<b>14</b>	<b>INDEPENDENT ADVISORS</b> .....	<b>42</b>
	<b>14.1 Appointment of Owner's advisors</b> .....	<b>42</b>
	<b>14.2 Advisor for TOC</b> .....	<b>42</b>

	14.3	Co-operation with advisors.....	43
	14.4	Open book .....	43
	14.5	Honest and open answers .....	43
	14.6	Costs for Owner’s advisors .....	43
15		<b>SELECTION OF SUCCESSFUL PROPONENT .....</b>	<b>43</b>
	15.1	Consideration of the Project Proposal .....	43
	15.2	Further Services.....	44
	15.3	Decision of the Owner .....	45
	15.4	Consequences of acceptance of the Project Proposal.....	45
	15.5	Consequences of not accepting the Project Proposal .....	46
	15.6	Acknowledgements .....	46
16		<b>PAYMENTS .....</b>	<b>47</b>
	16.1	General principles of payment .....	47
	16.2	Payments .....	48
	16.3	Sole right to payment .....	48
	16.4	Payment is not evidence of satisfactory workmanship.....	48
	16.5	Defaults .....	48
	16.6	Audit.....	48
	16.7	Notices from Subcontractors under the Construction Act.....	49
	16.8	Construction liens.....	50
	16.9	Bank Account .....	50
	16.10	Survival of Section 16.....	51
17		<b>INSURANCE AND BONDING .....</b>	<b>51</b>
	17.1	The Owner insurances .....	51
	17.2	Insurance to be taken out by each NOP .....	51
	17.3	No limitation due to insurance .....	52
	17.4	Summary of insurance .....	52
	17.5	Insurance claims notification .....	52

17.6	Payment of deductibles .....	52
17.7	Payments from insurers as Actual Cost .....	53
17.8	Participants responsibilities .....	53
17.9	Obligation to notify, assess and cooperate .....	53
17.10	Owner to be informed of Notices .....	54
17.11	Notice is notice by all insureds .....	54
17.12	Non-compliance .....	54
17.13	Surety bonds .....	54
18	<b>INDEMNITIES</b> .....	54
18.1	Non-compliance with insurance requirements by a NOP .....	54
18.2	Non-compliance with insurance requirements by the Owner .....	55
18.3	Wilful Default by a NOP .....	55
18.4	Wilful Default by the Owner Participant .....	55
18.5	Proportionate liability under the indemnities .....	55
18.6	Exclusion of Consequential Loss .....	56
18.7	Exception to the Exclusion of Consequential Loss .....	56
18.8	Cap on Liability .....	56
18.9	Conduct of Indemnity Claims .....	56
19	<b>INTELLECTUAL PROPERTY</b> .....	58
19.1	IP vested in NOP .....	58
19.2	Grant of IP .....	58
19.3	Right to grant sub-licences .....	59
19.4	IP indemnity .....	59
19.5	Liability of NOPs for certain uses .....	59
19.6	Moral rights .....	59
19.7	Survival of Section 19 .....	59
20	<b>TERMINATION</b> .....	59
20.1	No fault termination .....	59

20.2	Default .....	60
20.3	Expulsion of a NOP for Default.....	60
20.4	Consequences of an Expulsion Notice under this ADA .....	61
20.5	Appointment of Replacement NOP following an Expulsion Notice.....	61
20.6	Default termination of this ADA.....	62
20.7	Rights preserved.....	62
20.8	Survival of Section 20 .....	62
21	<b>NOTICES</b> .....	62
21.1	How and where Notices may be sent.....	63
21.2	Notices sent by company.....	63
21.3	When Notices are taken to have been given and received.....	63
21.4	Notice to the Owner and Owner Participant.....	63
22	<b>GENERAL</b> .....	63
22.1	Governing law and jurisdiction .....	63
22.2	Invalidity and enforceability.....	64
22.3	Waiver .....	64
22.4	Amendments .....	64
22.5	Entire agreement.....	64
22.6	Counterparts.....	64
22.7	Assignment.....	65
22.8	Change in Control.....	65
22.9	Confidentiality .....	67
22.10	Freedom of Information and Protection of Privacy Act .....	68
22.11	Publicity or media statements .....	68
22.12	Relationship of the Parties.....	68
22.13	Corporate power and authority .....	69
22.14	Financial difficulties.....	69
22.15	The Owner's statutory functions.....	69

22.16	Costs .....	69
22.17	Security vetting .....	69
22.18	Enurement .....	70
22.19	Remedies Cumulative .....	70
<b>23</b>	<b>INTRA NOP INDEMNITIES .....</b>	<b>70</b>
23.1	Sharing Liabilities between the NOPs .....	70
23.2	Indemnity to Pursued NOP .....	71
23.3	Mitigation of any Liability .....	71
23.4	Notice of claim .....	71
23.5	Breach of indemnity obligations .....	71
23.6	Apportionment between ADA and PAA .....	72
<b>24</b>	<b>BUILDING INFORMATION MODELLING .....</b>	<b>72</b>
24.1	BIM Protocol .....	72
24.2	Amendments to BIM Protocol .....	72
<b>25</b>	<b>PARENT COMPANY GUARANTEE .....</b>	<b>72</b>
25.1	Form of guarantee .....	72
25.2	Failure to provide guarantees by the ADA Commencement Date .....	72
25.3	Recourse by the Owner .....	73
25.4	Maintenance of guarantees .....	73
25.5	Demand is without prejudice to other rights .....	73
25.6	Costs of procuring guarantees are within the Fee .....	73
<b>26</b>	<b>COPYRIGHT NOTICE .....</b>	<b>73</b>

**SCHEDULES:**

1. Team Contact Details
2. Services
3. Project Proposal
4. Actual Cost
5. Fee



6. Alliance Team Protocols
7. Completion Documents
8. Target Outturn Cost
9. Insurance Policies and Bonds
10. Site Investigation
11. Early Works
12. Payment Procedures
13. Performance Incentivization Regime
14. Financial Establishment Audit
15. Guarantors
16. Parent Company Guarantee
17. Rail Corridor Access
18. Form of Project Alliance Agreement

**THIS ALLIANCE DEVELOPMENT AGREEMENT** is made as of the [9th] day of November, 2020

**BETWEEN:**

- (1) **Ontario Infrastructure and Lands Corporation**, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011;
- (2) **Metrolinx**, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency within the meaning of the *Crown Agency Act*, R.S.O. 1990, c.48, as amended in accordance with Section 3 of the *Metrolinx Act, 2006* (Ontario);  
  
(collectively, the “**Owner**”); and
- (3) **Kiewit-Alberici Union General Partnership (“NOP 1”)**; and
- (4) **Mass. Electric Construction Canada Co. (“NOP 2”)**; and
- (6) **WSP Canada Inc. (“NOP 3”)**;  
  
(the Owner and the NOPs together, the “**Parties**”)

**WHEREAS**

- (A) GO Expansion is an investment program that will transform GO Rail into a rapid rail system that provides the expanded mobility that the greater Toronto and Hamilton area needs to accommodate growth and maintain a high quality of life and prosperous economy in the Province of Ontario.
- (B) The Owner wishes to procure the design and construction of certain infrastructure improvements to Union Station, located in the City of Toronto, in order to accommodate the anticipated Regional Express Rail services which form part of the GO Expansion program.
- (C) The Owner issued the Request for Proposals for the Project on February 28, 2020.
- (D) The NOPs have been selected by the Owner to participate in the AD Phase in accordance with the Request for Proposals and this ADA.
- (E) Subject to the terms of this ADA, the Owner intends that the Project be undertaken pursuant to a Project Alliance Agreement under which the Owner will act as the client and a Participant in the Alliance with the NOPs.
- (F) The AD Participants have committed to deliver the Services required by this ADA as an integrated collaborative team, having regard to the Alliance Charter and the Alliance Principles set forth therein.
- (G) The AD Participants have committed to the goal of creating exceptional value and mutual benefits by, in part, driving a culture of innovation balanced by the imperative of reducing overall project risk.
- (H) The AD Participants have committed to integrating work health and safety into construction project management, redefining and integrating safety, health and well being into all Project workplaces.
- (I) The AD Participants have committed to elevating stakeholder partnerships.
- (J) A Project Proposal, including a Target Outturn Cost for the Project, is to be developed by the AD Participants pursuant to this ADA.

- (K) The Owner's Representative may issue a Request for Estimate to the AD Participants from time to time under this ADA in respect of Services and any Early Works required.
- (L) The AD Participants shall submit an Estimate in response to each such Request for Estimate in accordance with this ADA.
- (M) Following acceptance by the Owner's Representative of an Estimate in accordance with this ADA, the AD Participants shall proceed to develop the Project Proposal or Early Works Proposal, as applicable.
- (N) The Owner may, prior to or during the term of this ADA, elect (at its discretion) to enter into one or more agreements with Third Party contractors for the delivery of Implementation Works and the Owner may, for the purpose of this ADA and the Project Alliance Agreement, require the AD Participants to adopt the Implementation Works as part of the Works under the Project Alliance Agreement and for those Implementation Works to be procured and (to the extent such works have been procured by the Owner prior to the date of the Project Alliance Agreement) to be deemed to be procured in either case by the Owner Participant in its capacity as a Participant in the Alliance.

**OPERATIVE PROVISIONS:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The meanings of the terms used in this ADA are set out below.

<b>“Accounting Period”</b>	the Owner's four weekly consecutive accounting periods commencing on April 1 in each calendar year.
<b>“Actual Cost”</b>	has the meaning given in Section 1.1 of Schedule 4 (Actual Cost).
<b>“Actualized Category”</b>	any skill type category, grade and/or band against which any NOP allocates and remunerates its personnel engaged in the Services or Early Works and which is approved by the ALT for the purposes of determining any Actualized Rates for that NOP.
<b>“Actualized Period”</b>	the period for determining and reconciling Actualized Rates, being any three (3) month period commencing on January 1, April 1, July 1, or October 1 of any calendar year.
<b>“Actualized Rates”</b>	the rates calculated in accordance with the methodology set forth in Section 7 of Schedule 4 (Actual Cost) as a proxy for Actual Cost as approved by the ALT.
<b>“ADA”</b>	this Alliance Development Agreement.
<b>“ADA Commencement Date”</b>	the date of this ADA.

<b>“ADA NOP Risk Cap”</b>	has the meaning given in Section 2.9 of Schedule 13 (Performance Incentivization Regime).
<b>“ADA NOP Split”</b>	has the meaning given in Section 2.8 of Schedule 13 (Performance Incentivization Regime).
<b>“Additional Owner Permanent Lands”</b>	has the meaning set forth in Section 12.1.8.
<b>“Additional Permanent Lands Request”</b>	has the meaning set forth in Section 12.1.8.
<b>“Adjusted Actualized Amount”</b>	has the meaning given in Section 7.2.7 of Schedule 4 (Actual Cost).
<b>“AD Establishment Framework”</b>	the framework described in Section 6 of Schedule 2 (Services).
<b>“AD Participant”</b>	any of the NOPs or the Owner Participant and <b>“AD Participants”</b> means all of them.
<b>“AD Establishment Framework”</b>	the establishment framework described in Section 6 of Schedule 2 (Services).
<b>“AD Foundation Workshop”</b>	the workshop described in Section 6.1.2 of Schedule 2 (Services).
<b>“AD Participant Personnel”</b>	in respect of each AD Participant, all directors, officers, employees, agents, consultants and contractors of the AD Participant and/or of any Subcontractor engaged by the AD Participant under this ADA.
<b>“AD Phase”</b>	the phase of the procurement process for the Project, which commences on the ADA Commencement Date and ends on the earlier of: <ul style="list-style-type: none"> <li>(a) the date of execution of the Project Alliance Agreement by the Owner and the NOPs; or</li> <li>(b) the date of termination of this ADA.</li> </ul>
<b>“Affiliate Subcontract Fee”</b>	that part of the total price payable to or to be credited to an Affiliated Subcontractor which is attributable to the Affiliated Subcontractor’s overhead and profit for the part of the work or services undertaken pursuant to the relevant Affiliated Subcontract.

<b>“Affiliated Subcontract”</b>	has the meaning given in Section 20.3 of the PAA.
<b>“Affiliated Subcontractor”</b>	has the meaning given in Section 20.3 of the PAA.
<b>“Alliance Auditor”</b>	the independent auditor appointed by the ALT under this ADA for carrying out audits on behalf of the AD Participants as required or permitted under this ADA and who will be the <b>“Alliance Auditor”</b> under the PAA.
<b>“Alliance Director”</b>	the person specified in Section 6.1 or any other person appointed as the Alliance Director in accordance with the terms of the ADA for the purposes of this ADA from time to time
<b>“Alliance Leadership Team” or “ALT”</b>	the leadership team established under Section 4.1.
<b>“Alliance Management Team” or “AMT”</b>	the management team established under Section 6.2.
<b>“Alliance NOPs”</b>	the NOPs as parties to the Project Alliance Agreement.
<b>“Alliance Project Team” or “APT”</b>	the project team established under Section 7.1.
<b>“Alliance Team Protocols”</b>	the protocols to be complied with by the AD Participants in performing the Services and Early Works as set out in Schedule 6 (Alliance Team Protocols).
<b>“Authorization”</b>	any permission, consent, registration, filing, agreement, approval, certificate, licence, permit, authorization or exemption from, by or with a Governmental Authority or a Third Party required to perform the Works.
<b>“Bank Account”</b>	for each NOP, its nominated bank account for payments by the Owner as described in Section 16.9 of this ADA and each NOP shall have a separate bank account for the purpose of this ADA.
<b>“Baseline Schedule”</b>	a cost and resource loaded schedule for provision of the Services or Early Works (as applicable) in like format to the Baseline Works Schedule described in Schedule 3 (Project Proposal).
<b>“Beneficiary”</b>	has the meaning given in Section 18.9.

<b>“Bonds”</b>	any one or more of the Performance Bonds and the Labour and Material Payment Bonds described in Section 3 of Schedule 9 (Insurance Policies and Bonds) and, collectively, means all of them.
<b>“Composite Rate”</b>	any rate or price in Schedule 8 (Target Outturn Cost) which is derived from a combination of Resource Unit Rates and which, subject to Schedule 8 (Target Outturn Cost), may be used in the development of the Target Outturn Cost.
<b>“Confidential Information”</b>	any information that ought to be considered as confidential and proprietary information (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person and their Intellectual Property and all Personal Information which is supplied by or on behalf of a Party, whether before or after the date of this ADA.
<b>“Consequential Loss”</b>	loss of use and/or interruption of operations, loss of production, loss of revenue, loss of profit or anticipated profit or loss of business reputation, but does not include any loss expressly stated in Section 18.7 or any loss or increased costs to a Party caused by: <ul style="list-style-type: none"> <li>(a) reduction in the Actual Cost or Fee payable by the Owner to any NOP by virtue of Schedule 4 (Actual Cost) or Schedule 5 (Fee);</li> <li>(b) an increase in the Actual Cost or Fee payable by the Owner to any NOP by virtue of Schedule 4 (Actual Cost) or Schedule 5 (Fee);</li> <li>(c) a reduction in the amount payable by the Owner to any NOP by virtue of Schedule 13 (Performance Incentivization Regime); or</li> <li>(d) an increase in the amount payable by the Owner to any NOP by virtue of Schedule 13 (Performance Incentivization Regime).</li> </ul>
<b>“Construction Act”</b>	the <i>Construction Act</i> , R.S.O. 1990, c. C.30, and regulations enacted thereunder, all as amended from time to time and subject to the application of the transition provisions in s. 87.3 of the <i>Construction Act</i> .
<b>“Contract Limit”</b>	has the meaning given in Section 16.1.4.
<b>“Copyrights”</b>	all copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions.
<b>“Current Actualized Period”</b>	any Actualized Period during which payment of Actual Costs are measured using Actualized Rates determined in respect of the relevant Preceding Period in accordance with Section 7.2.7 of Schedule 4 (Actual Cost).

<b>“Default”</b>	has the meaning given in Section 20.2.
<b>“Diligence”</b>	the exercise of the degree of skill, care, expertise, diligence and foresight which would from time to time be expected of skilled and experienced professional persons engaged in undertakings of a similar scope, type and complexity as the Services or Early Works.
<b>“Early Works”</b>	those construction works and services identified in a Request for Estimate to be performed by the AD Participants during the AD Phase in accordance with this ADA.
<b>“Early Works Proposal”</b>	a proposal for Early Works which is developed by the AD Participants and submitted to the Owner’s Representative in accordance with Section 12.3 of this ADA.
<b>“Early Works Submission Date”</b>	the date for submission of the Early Works Proposal, as notified by the Owner’s Representative in the relevant Request for Estimate, as amended from time to time by the Owner’s Representative in accordance with this ADA.
<b>“Estimate”</b>	the proposal submitted by the AD Participants to the Owner’s Representative in response to a Request for Estimate.
<b>“Estimate Approval”</b>	has the meaning given in Section 11.4.1.
<b>“ETA”</b>	means Part IX of the <i>Excise Tax Act</i> (Canada), as amended.
<b>“Evaluation Criteria”</b>	has the meaning given in Section 15.1.1 and as identified in the relevant Request for Estimate as may be amended from time to time on notice by the Owner’s Representative to the AD Participants.
<b>“Expulsion Notice”</b>	has the meaning given in Section 20.3.1.
<b>“Fee”</b>	for each NOP, the amount of the Overhead and Profit determined in accordance with Schedule 5 (Fee) and payable in accordance with Schedule 12 (Payment Procedures).
<b>“Financial Establishment Audit”</b>	the financial audit to be undertaken as described in Schedule 14 (Financial Establishment Audit) of this ADA.
<b>“Good Faith”</b>	in the context of this ADA means:

- (a) acting in accordance with the Alliance Principles, Alliance Purpose and Alliance Objectives both in a literal sense and with their intent;
- (b) undertaking, adopting and implementing all things reasonably necessary to ensure a Best For Project outcome; and
- (c) being fair, honest and reasonable and acting with integrity at all times.

**“Governance Plan”** the governance plan for the Project to be developed and approved by the ALT as part of the AD Establishment Framework and subsequently set out in the Project Proposal.

**“Implementation Works”** the advanced and/or enabling work and/or services to be procured by the Owner under separate agreements with contractors (whether a NOP or a Third Party) as described in the Request for Estimate (or otherwise notified by the Owner’s Representative to the AD Participants), which shall form part of the Owner Participant’s Actual Cost of the Project.

**“Indemnifier”** has the meaning given in Section 18.9

**“Information”** has the meaning given in Section 12.10.

**“Initial Actualized Amount”** has the meaning given in Section 7.2.7 of Schedule 4 (Actual Cost).

**“Intellectual Property”** all intellectual and industrial property, including: (a) Trade-Marks; (b) Patents; (c) Copyrights; (d) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications; (e) ideas and conceptions of potentially patentable subject matter, including any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications; (f) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, designs, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice); (g) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, methodologies, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, marketing and business data, pricing and cost information, business and marketing plans; (h) copies and tangible embodiments of all the foregoing, in whatever form or medium; (i) all rights to obtain and rights to apply for any of the foregoing and all rights therein provided by multinational treaties or conventions; (j) all rights under any agreements or instruments with respect to items in (a) to (i) above; and (k) all rights to sue and recover and retain damages and costs and attorneys’ fees for present and past



infringement or other violation of any of the intellectual property rights hereinabove set out.

<b>“Invoice”</b>	includes any document or record that contains the information proscribed for purposes of subsection 169(4) of the ETA. An Invoice rendered in respect of a supply made to the Owner shall indicate that the recipient of the supply is Metrolinx.
<b>“Issue”</b>	any issue, disagreement, difference of opinion or failure to agree arising out of or in connection with this ADA other than in relation to a Default.
<b>“Key Individual”</b>	those individuals identified as key individuals in the RFP Proposal Technical Submission (as defined in the RFP) submitted by the NOPs pursuant to the RFP.
<b>“Key Performance Indicator” or “KPI”</b>	the key performance indicators in respect of each Key Result Area, as detailed in Table 2, Annex 1 of Schedule 13 (Performance Incentivization Regime).
<b>“Key Performance Score” or “KPS”</b>	has the meaning given in Section 2.4.1.1 of Schedule 13 (Performance Incentivization Regime).
<b>“Key Result Areas” or “KRAs”</b>	have the meaning given in Table 1, Annex 1 of Schedule 13 (Performance Incentivization Regime).
<b>“KPI Maximum Liability Amount”</b>	has the meaning given in Section 2.4.1.2 of Schedule 13 (Performance Incentivization Regime).
<b>“KPI Maximum Reward Amount”</b>	has the meaning given in Section 2.5.1.2 of Schedule 13 (Performance Incentivization Regime).
<b>“KPI Performance Liability Amount”</b>	has the meaning given in Section 2.4.1 of Schedule 13 (Performance Incentivization Regime).
<b>“KPI Performance Award Amount”</b>	has the meaning given in Section 2.5.1 of Schedule 13 (Performance Incentivization Regime).
<b>“Labour and Material Payment Bond”</b>	a Labour and Material Payment Bond (and Multiple Obligee Rider to Labour and Material Payment Bond, as required under the Construction Act) described in Section 3.3 of Schedule 9 (Insurance Policies and Bonds).
<b>“Liability”</b>	has the meaning given in Section 23.1.

<b>“Lump Sum Price”</b>	has the meaning given in Section 11.3.5.
<b>“Maximum Performance Liability Amount”</b>	has the meaning given in Section 2.4.4 of Schedule 13 (Performance Incentivization Regime).
<b>“Maximum Performance Reward Amount”</b>	has the meaning given in Section 2.5.4 of Schedule 13 (Performance Incentivization Regime).
<b>“MCOS Performance”</b>	the minimum conditions of satisfaction or benchmark level of performance for each Key Result Area and/or KPI as further detailed in Schedule 13 (Performance Incentivization Regime).
<b>“Mobilization Plan”</b>	the 100-day mobilization plan described in Section 6 of Schedule 2 (Services).
<b>“Modification”</b>	means all modifications, changes, enhancements, improvements, supplements, customizations or derivative works.
<b>“Month”</b>	a calendar month.
<b>“Non Owner Participant” or “NOP”</b>	<ul style="list-style-type: none"> <li>(a) any of the persons other than the Owner listed as a Party to this ADA as the context so requires and <b>“NOPs”</b> means all of them;</li> <li>(b) <b>“NOP 1”</b>, <b>“NOP 2”</b>, or <b>“NOP 3”</b> is respectively the Party named and defined as such in this ADA; and</li> <li>(c) NOP excludes the Owner in its capacity as the Owner and as the Owner Participant.</li> </ul>
<b>“Non-Pursued NOP(s)”</b>	has the meaning given in Section 23.2.
<b>“NOP Party”</b>	any person engaged by a NOP from time to time as may be permitted by this ADA to procure or manage the provision of the Works (or any of them); and, in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors.
<b>“NOP’s Proportion”</b>	has the meaning given in Section 23.1.
<b>“Notice”</b>	has the meaning given in Section 21.1.
<b>“Overhead”</b>	for each NOP, the amount of corporate overhead for the relevant NOP determined in accordance with Schedule 5 (Fee).

<b>“Owner”</b>	has the meaning given in the recitals of this ADA.
<b>“Owner Participant”</b>	the Owner in its capacity as an AD Participant for the performance of the Services and any Early Works, excluding the Owner in its capacity as Owner under this ADA.
<b>“Owner Participant Rates”</b>	has the meaning given in Section 1.3 of Annex 2 to Schedule 4 (Actual Cost).
<b>“Owner’s Representative”</b>	the representative of the Owner named in Schedule 1 (Team Contact Details) for the fulfilment of the duties and functions ascribed to the Owner’s Representative in this ADA, as such person may from time to time be replaced by the Owner pursuant to Section 9.2.
<b>“Participant”</b>	any Alliance NOP or the Owner Participant each as a party to the PAA and <b>“Participants”</b> means all of them.
<b>“Party”</b>	any of the Owner, NOP 1, NOP 2, or NOP 3 and <b>“Parties”</b> means all of them, as the context requires, but, for greater certainty, such definition does not include MOI.
<b>“Patents”</b>	includes all national (including the United States and Canada), regional and multinational statutory invention registrations, patents, patent registrations, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application.
<b>“Payment Certificate”</b>	has the meaning given in Section 3.1.1 of Schedule 12 (Payment Procedures).
<b>“Payment Period”</b>	a one (1) month period during which Work was performed, with the start and end dates being the first (1 <sup>st</sup> ) calendar day of the month and the last calendar day of the month, respectively.
<b>“Payment Period Amount”</b>	has the meaning given in Section 2.3.3 of Schedule 12 (Payment Procedures).
<b>“Performance Bond”</b>	a Performance Bond described in Section 3.3 of Schedule 9 (Insurance Policies and Bonds).
<b>“Performance Incentivization Regime”</b>	means the performance incentivization regime set out in Schedule 13 (Performance Incentivization Regime).

<b>“Personal Information”</b>	all personal information (as the term “personal information” is defined in PIPEDA) in the custody or control of a NOP other than personal information of the employees of the NOP and other than personal information that is wholly unrelated to the Services or Early Works and not derived directly or indirectly from the Owner or an Owner Participant in respect of the Project.
<b>“Performance Liability Amount”</b>	has the meaning given in Section 2.4.2 of Schedule 13 (Performance Incentivization Regime).
<b>“Performance Reward Amount”</b>	has the meaning given in Section in 2.5.2 of Schedule 13 (Performance Incentivization Regime).
<b>“PIPEDA”</b>	the <i>Personal Information Protection and Electronic Documents Act</i> , S.C. 2000, c. 5, as amended from time to time.
<b>“Poor Performance”</b>	the level of poor performance for each Key Result Area, being worse than MCOS Performance, as further described in Schedule 13 (Performance Incentivization Regime).
<b>“Preceding Period”</b>	the Actualized Period immediately preceding any Current Actualized Period.
<b>“Pricing Document”</b>	the document identified as containing the Composite Rates and Resource Unit Rates, as approved by the ALT, under and in relation to this ADA and the PAA.
<b>“Profit”</b>	for each NOP, the amount for profit for the relevant NOP stated in Schedule 5 (Fee) and payable under this ADA.
<b>“Project”</b>	has the meaning given in the Request for Proposals.
<b>“Project Alliance Agreement” or “PAA”</b>	the agreement in the form attached as Schedule 18 (Form of Project Alliance Agreement) to this ADA to be entered into (subject to the terms of this ADA and the Request for Proposals) between the Owner (in its capacity as the Owner and as a Participant in the Alliance) and the NOPs, as may be amended, replaced or supplemented from time to time in accordance with this ADA.
<b>“Project Proposal”</b>	the proposal for the Project which is developed by the AD Participants and submitted to the Owner in accordance with Section 12 of this ADA.
<b>“Proper Invoice”</b>	has the meaning given to it in the Construction Act and, in addition, any Proper Invoice must comply with the requirements for Proper Invoices set forth in Schedule 12 (Payment Procedures).

<b>“Proponent”</b>	has the meaning given in the Request for Proposals.
<b>“Pursued NOP”</b>	has the meaning given in Section 23.2.
<b>“Quantitative Cost Risk Analysis” or “QCRA”</b>	a quantitative cost risk analysis, being a process for assessing the total cost risk exposure for a project using discrete risks, estimating uncertainty and schedule outputs to estimate an appropriate level of cost contingency to supplement the project estimate and provide confidence that the budgetary allowance will not be surpassed.
<b>“Quantitative Schedule Risk Analysis” or “QSRA”</b>	a quantitative schedule risk analysis, being a process for assessing task duration uncertainty and discrete risks to a project schedule so as to provide a level of confidence in meeting key deliverable dates.
<b>“Recovery Amount”</b>	has the meaning given in Section 18.9.6.
<b>“Relevant Conviction”</b>	a charge or conviction, at any time within the previous six years of any offence: (a) of moral turpitude in Canada or elsewhere; (b) for which records exist under the <i>Criminal Records Act</i> ; or (c) otherwise designated as a Relevant Conviction by the Owner from time to time, and that conviction remains in effect at the time and is one for which a pardon has not been granted.
<b>“Relevant Entity”</b>	has the meaning given in Section 22.8.9.
<b>“Relevant NOP”</b>	has the meaning given in Section 3.7.2.
<b>“Relevant Period”</b>	the period commencing on the ADA Commencement Date and expiring on the later of: <ul style="list-style-type: none"> <li>(a) the date which is seven years from the termination of this ADA; or</li> <li>(b) the date necessary to ensure that the Parties comply with any Statutory Requirement relating to record keeping.</li> </ul>

<b>“Request for Estimate”</b>	<p>any request for estimate which the Owner’s Representative may issue to the AD Participants from time to time setting out:</p> <ul style="list-style-type: none"> <li>(a) a summary of the scope of Services or Early Works required;</li> <li>(b) the Evaluation Criteria;</li> <li>(c) planned Submission Date and planned Early Works Submission Date, as applicable;</li> <li>(d) the latest date for submission of the Estimate (unless agreed otherwise by the Owner’s Representative and the ALT); and</li> <li>(e) the Owner’s budget for the Participants’ aggregate Actual Cost and Fee of preparing the Project Proposal and any Early Works Proposals.</li> </ul>
<b>“Request for Proposals” or “RFP”</b>	<p>the request for proposals (RFP No. 19-190) issued by the Owner in respect of the Project on February 28, 2020, as amended from time to time.</p>
<b>“Reserved Activities”</b>	<p>the assembly, erection or installation of any part of the Works required to be carried out under, on or over the Site, by Owner, for the avoidance of doubt excluding any provision by the Owner Participant (whether itself or by its subcontractors) of any:</p> <ul style="list-style-type: none"> <li>(a) project management or contract administration; or</li> <li>(b) health, safety and environmental resources,</li> </ul> <p>in connection with such part of the Works.</p>
<b>“Resource Unit Rate”</b>	<p>any individual rate or price in Schedule 8 (Target Outturn Cost) for the supply of a single unit of labour, staff, goods, materials, plant or equipment used in the development of a Target Outturn Cost.</p>
<b>“RFP Proposal Technical Submission”</b>	<p>the RFP Proposal Technical Submission, as defined in the RFP, submitted by the NOPs in accordance with the RFP process.</p>
<b>“Risk and Contingency Provision”</b>	<p>the provision for all possible Actual Costs associated with Alliance Risks that may arise in performing the Works calculated in the Alliance Risk and Opportunity Report with a QCRA at [REDACTED]% probability ([REDACTED]) and included in the Target Outturn Cost, but excluding any Adjustment Events.</p>
<b>“Schedule of Rates”</b>	<p>the schedule of rates in each Estimate in respect of the costs described in Schedule 4 (Actual Cost) approved by the Owner’s Representative, which shall set out:</p> <ul style="list-style-type: none"> <li>(a) the rates per category of staff; and</li> <li>(b) man hours,</li> </ul>

in each case excluding Overhead and Profit in respect of the provision of the Services or Early Works.

<b>“Scope Variation”</b>	has the meaning given in Section 12.9.1.
<b>“Services”</b>	those services identified in Schedule 2 (Services) to be performed by the AD Participants during the AD Phase in accordance with this ADA, including the preparation of any Estimate in accordance with this ADA.
<b>“Site”</b>	any land or any part of land where any part of the Works is to be performed or to which access is reasonably required in order to perform such Works.
<b>“Site Labour”</b>	for any NOP, any person employed by that NOP to which Table C of Schedule 4 (Actual Cost) is applicable.
<b>“Staff”</b>	for any NOP, any person employed by that NOP to which Table B of Schedule 4 (Actual Cost) is applicable.
<b>“Stretch Performance”</b>	the level of stretch performance for each Key Result Area, being better than MCOS Performance, as further described in Schedule 13 (Performance Incentivization Regime).
<b>“Subcontractor”</b>	any person engaged by an AD Participant to perform any part of the Works and includes, where it is not inconsistent with the context, that person’s subcontractors, suppliers, agents and consultants. A Subcontractor includes any Implementation Works Subcontractor and a Subcontractor may include the counterparty to a subcontract with the Owner Participant.
<b>“Submission Date”</b>	the date for submission of the Project Proposal, as notified by the Owner’s Representative in the relevant Request for Estimate, as amended from time to time by the Owner in accordance with this ADA.
<b>“Successful Proponent”</b>	has the meaning given in Section 1.1(3) of the Request for Proposals.
<b>“Target Outturn Cost”</b>	the specific sum to be developed by the AD Participants under this ADA identified as the Target Outturn Cost in the Project Proposal at the Commencement Date of the PAA, being the aggregate of: <ul style="list-style-type: none"><li>(a) the estimate of the Actual Costs for each NOP;</li><li>(b) the estimate of the Actual Costs for the Owner Participant;</li></ul>

- (c) the estimate of the Actual Costs for the Owner, but only to the extent such costs are expressly stated by the PAA to be Actual Costs of the Owner Participant;
- (d) the Risk and Contingency Provision for all the Participants; and
- (e) the Fee for each NOP,

required to achieve MCOS Performance, perform the Works and bring the Works to the stage where the Final Certificate can be issued in accordance with the PAA, and as the same may be adjusted in accordance with the PAA at the relevant time and if required. The Target Outturn Cost shall include, without limitation, the amounts payable as Actual Costs, Overhead and Profit in accordance with the PAA.

**“TOC Validation Report”**

a detailed build-up of all the components of the proposed Target Outturn Cost prepared by the AD Participants in consultation with the Owner’s advisors in the format required by the Owner’s Representative and included within the Project Proposal.

**“Total Contract Costs”**

has the meaning given in Section 16.1.4.

**“Trademarks”**

all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the Canadian Intellectual Property Office and the trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions.

**“VfM”**

the value for money proposition as defined in Section 3.2, Schedule 7 (VFM Statement) of the PAA.

**“Wilful Default”**

in respect of any AD Participant (including the Owner Participant but excluding the Owner) (the **“Relevant Participant”**):

- (a) a deliberate and purposeful act or omission carried out, or real and substantial evidence of a deliberate and purposeful act or omission carried out, with a reckless disregard or calculated regard for the consequences of the act or omission by the Relevant Participant, its respective Officers, or any representative of the Relevant Participant on the ALT or AMT, which is a breach of a duty or any obligation, arising out of or in connection with this ADA, or which is a breach of a duty or obligation owed by the Relevant Participant to the Owner or any other NOP however arising (which includes a breach of the Alliance Charter);
- (b) a fraudulent act or omission, arising out of or in connection with this ADA, by the Relevant Participant, any director,



officer, employee or agent of the Relevant Participant, any representative of the Relevant Participant on the ALT or AMT;

- (c) a repudiation or abandonment of this ADA by the Relevant Participant, including a failure by the Relevant Participant to diligently pursue the development and submission of the Project Proposal to the Owner in Good Faith;
- (d) a failure of the Relevant Participant to execute and deliver the PAA in accordance with Section 15.4;
- (e) any deliberate or reckless act or omission by the Relevant Participant or any of its officers or directors or any of its representatives appointed to the ALT or AMT which:
  - (i) is a breach of any Applicable Law; or
  - (ii) prevents a non-defaulting AD Participant from performing a role, responsibility or function or discharging an obligation under any Applicable Law;
- (f) a failure of a NOP to comply with Section 22.7;
- (g) a failure of a NOP to comply with Section 22.8; or
- (h) any act or omission by an officer, representative or employee of the Relevant Participant that:
  - (i) would, if done by an Officer, constitute a Wilful Default;
  - (ii) has come to the attention of an Officer of the Relevant Participant, or any representative of the Relevant Participant appointed to the ALT or AMT; and
  - (iii) the relevant Officer or representative of the Relevant Participant appointed by the ALT or AMT has not taken reasonable action to address,

but does not include (with the exception of paragraph (g)) any error of judgement, mistake, act or omission, whether negligent or not, which is made in Good Faith by:

- (a) the Relevant Participant;
- (b) any director, officer, employee or agent of the Relevant Participant; or
- (c) any representative of the Relevant Participant on the ALT, AMT or APT.

**“Work Breakdown Structure” or “WBS”**

the AD Participants’ work breakdown structure agreed to with the Owner’s Representative.

**“Works”**

the whole of the work and services to be performed in accordance with this ADA and the Project Alliance Agreement, including the Services and any Early Works.

**“Year”** any calendar year.

## **1.2 Interpretation**

In this ADA:

- 1.2.1 a reference to any statute, treaty or legislative provision or to a provision of it must be construed, at any particular time, as including any amendments, consolidations, extensions, replacements or re-enactments at any time in force and to all subordinate legislation made under it;
- 1.2.2 except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the ADA) references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the ADA are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the ADA and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous;
- 1.2.3 except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the ADA followed by a number are references to the whole of the Section, Article, Clause, Paragraph, Subparagraphs, Schedule or other division of the ADA as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix;
- 1.2.4 the Schedules to this ADA are an integral part of this ADA and a reference to this ADA includes a reference to the Schedules;
- 1.2.5 the singular includes the plural and vice versa;
- 1.2.6 words of any gender include all genders;
- 1.2.7 words denoting natural persons include any other persons;
- 1.2.8 headings, tables of contents, and bold type are for convenience only and do not affect the interpretation or construction of this ADA;
- 1.2.9 a reference to a document (including this ADA) is that document as varied, amended, novated, supplemented, modified, ratified or replaced at that time;
- 1.2.10 other parts of speech and grammatical forms of a word or phrase defined in this ADA have a corresponding meaning;
- 1.2.11 the words “include” or “for example” or similar expressions do not limit what else is included;
- 1.2.12 the word “law” includes common law and any constitution, decree, judgement, legislation, order, ordinance, regulation, statute, treaty or other legislative measure;
- 1.2.13 references to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions

without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization;

- 1.2.14 an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government, state or any agency of a government or state as well as an individual;
- 1.2.15 a reference to a body (including an institute, association or authority), other than a party to this ADA, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- 1.2.16 all money referred to under this ADA is in Canadian Dollars (CAD); and
- 1.2.17 unless otherwise provided in this ADA, all accounting and financial terms used in this agreement shall be interpreted and applied in accordance with Canadian GAAP, which shall be deemed to be the generally accepted accounting principles from time to time approved by the Accounting Standards Board (Canada), or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.

### **1.3 Business Day**

- 1.3.1 Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.
- 1.3.2 Any reference to time of day or date means the local time or date in Toronto, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day measured from midnight to midnight.

### **1.4 Ambiguities and inconsistencies**

- 1.4.1 If the AD Participants discover any ambiguity, discrepancy or inconsistency between any of the provisions of this ADA or any other document expressly incorporated into this ADA:
  - 1.4.1.1 they must notify the Owner’s Representative of this in writing; and
  - 1.4.1.2 the Owner’s Representative will direct the AD Participants as to the interpretation to be followed by the AD Participants in performing their obligations under this ADA.
- 1.4.2 If the Owner discovers any ambiguity, discrepancy or inconsistency between any of the provisions of this ADA or any other document expressly incorporated into this ADA, the Owner’s Representative will direct the AD Participants as to the interpretation to be followed by the AD Participants in performing their obligations under this ADA.

- 1.4.3 The AD Participants are not entitled to any additional costs by reason of a direction from the Owner's Representative under this Section 1.4.

## **1.5 Relationship to Project Alliance Agreement**

- 1.5.1 Any reference to a section, part, annex, schedule or table in the PAA in this ADA is deemed to incorporate such Section, part, annex, schedule or table into this ADA as if such section, part, annex, schedule or table was expressly set out herein with any necessary amendments *mutatis mutandis*.
- 1.5.2 Terms used in this ADA and not otherwise defined have the meanings ascribed thereto in the PAA.

## **2 PURPOSE AND SCOPE OF AD PHASE**

### **2.1 Purpose and scope**

The purpose and scope of the AD Phase is:

- 2.1.1 for the AD Participants to perform the Services in accordance with this ADA (including the Alliance Charter, the Alliance Team Protocols and the commitments set forth in Section 3);
- 2.1.2 for the AD Participants to jointly and collaboratively develop the Project Proposal and Target Outturn Cost in accordance with the Project's VFM Statement and the Owner's Request for Estimate, on a Best For Project basis, on or before the Submission Date and in such manner as will enable the Project Proposal to be capable of being accepted by the Owner and incorporated into the PAA;
- 2.1.3 to enable the AD Participants to reduce overall project risk by collaborating in the investigation, planning, design and development of the Project Proposal and the delivery of Early Works, clearly identifying risk and contingency factors;
- 2.1.4 to enable the AD Participants to experience the reality of working as a collaborative team within an alliance framework;
- 2.1.5 to enable the AD Participants to demonstrate how they will participate in the Alliance with the Owner if the PAA is entered into by the Parties in accordance with this ADA;
- 2.1.6 to enable the Owner and the AD Participants to procure the establishment of the ALT for the purposes of this ADA and in advance of a PAA being potentially executed;
- 2.1.7 to enable the delivery of certain Early Works by the AD Participants in advance of the execution of a PAA; and
- 2.1.8 to enable the ALT to conduct the Financial Establishment Audit.

### **2.2 Performance of Early Works by Owner**

The AD Participants acknowledge and accept that, without limiting Section 9.4 and the Owner's duties to co-operate with and assist the AD Participants to perform the Services

and any Early Works, the Owner may at any time in its sole and absolute discretion elect to deliver all or any part of the Project or the Works (including, for clarity, Early Works) which has not been incorporated into the Project Alliance Agreement, either by itself or by way of separate arrangements entered into with others.

### **2.3 Release by NOPs**

The NOPs release the Owner from any losses, damages or claims arising out of or in connection with any co-operation or assistance provided, or any failure to provide any co-operation or assistance, by the Owner or the Owner's Representative to the NOPs under this ADA.

### **2.4 Owner liability**

The Owner is not liable for any losses, damages or claims suffered by the NOPs arising from:

- 2.4.1 the termination or expiry of this ADA for any reason;
- 2.4.2 the Owner not accepting the submitted Project Proposal for any reason; or
- 2.4.3 the termination or expiry of the PAA for any reason (save as set out in the PAA),

except for the payment of Actual Cost, Overhead and Profit in accordance with Section 16, Schedule 4 (Actual Cost), Schedule 5 (Fee) and Schedule 12 (Payment Procedures).

### **2.5 Application to site investigations**

The provisions of Schedule 10 (Site Investigation) shall apply where any NOP is required to carry out site investigation services as stated in the relevant Request for Estimate.

### **2.6 Rail corridor access**

The provisions of Schedule 17 (Rail Corridor Access) shall apply to any NOP that is required to perform any Early Works or site investigation services during the AD Phase.

## **3 COMMITMENTS**

### **3.1 Alliance principles**

In performing the Services and Early Works, the AD Participants agree at all times to act (to the maximum extent possible and subject to the terms of the Request for Estimate), in accordance with the following Alliance Principles and Alliance Objectives:

- 3.1.1 The AD Participants commit to establishing a collaborative alliance culture based on the Alliance Charter and to act at all times in a manner that is consistent with a Best For Project approach;
- 3.1.2 The promotion and maintenance of a "no blame" and "no claim" culture between the AD Participants in relation to disputes, errors, mistakes, Defects, poor performance and other issues that may arise, and the prompt and mutual resolution of all disputes, differences and other issues by all AD Participants within the framework created by this ADA;

- 3.1.3 Win together, lose together;
- 3.1.4 Empowered accountability;
- 3.1.5 Safety first and always;
- 3.1.6 One team approach;
- 3.1.7 Full transparency and an open book commitment;
- 3.1.8 Creating exceptional value and mutual benefits;
- 3.1.9 Achieving a value for money outcome in respect of the Project by the AD Participants developing the Project Proposal to meet the VFM Statement.

The Parties will reach alignment on the Alliance Charter, consistent with the objectives and principles set forth above, as part of the AD Foundation Workshop referred to in Schedule 2 (Services).

### **3.2 Good Faith**

In performing the Services and Early Works, the AD Participants agree at all times to act in Good Faith.

### **3.3 Open book commitment**

3.3.1 Each AD Participant commits to:

3.3.1.1 maintain, for at least the Relevant Period, all of their records and other documentation referred to in this ADA that relate to the Services and Early Works in accordance with, where applicable, the requirements of the Province, Canadian GAAP and Good Industry Practice, having due regard to the policies and guidelines of the Office of the Privacy Commissioner of Ontario;

3.3.1.2 make their records and other documentation referred to in this ADA that relate to the Services and Early Works available to each other (or each others nominated auditor), the Owner's Representative and the Alliance Auditor on request; and

3.3.1.3 make available to each other (or each other's nominated auditor), the Owner's Representative and the Alliance Auditor any existing documentation or information in whatever form relating to the Services and the Early Works, including documentation and information relating to its Actual Cost or Overhead incurred by it directly or relating to any of its Affiliates or Subcontractors undertaking any part of the Services or Early Works.

3.3.2 The obligation to make records and documentation available pursuant to this Section 3.3 does not apply to records or documentation that may be the subject of legal professional privilege or are confidential lawyer-client communications.

- 3.3.3 For the purposes of this Section 3.3, references to the Owner's Representative include the Auditor General of Ontario, the Auditor General of Canada and Her Majesty the Queen in right of Canada.

### **3.4 Commitment to “no blame” and “no claim” culture**

The AD Participants acknowledge and agree that a key purpose of this ADA is, and they will commit themselves to:

- 3.4.1 the promotion and maintenance of a “no-blame” and “no claim” culture between the AD Participants in relation to disputes, errors, mistakes, Defects, poor performance and other issues which may arise in connection with the Services and the Early Works; and
- 3.4.2 the prompt and mutual resolution of all disputes, differences and other issues by all AD Participants within the framework created by this ADA, including Section 5.

### **3.5 AD Participants' obligations**

Each AD Participant must:

- 3.5.1 at all times be suitably qualified and experienced and ensure that their employees, contractors and consultants are so qualified and experienced;
- 3.5.2 exercise Diligence in the performance of the Services, the Early Works and its other obligations under this ADA;
- 3.5.3 ensure that the Services, any Early Works Proposal and the Project Proposal comply with the Owner's requirements set out in or reasonably inferred from the relevant Request for Estimate; and
- 3.5.4 develop any Early Works Proposal and the Project Proposal taking into account all of the above and the other requirements of this ADA.

### **3.6 Changes to personnel**

- 3.6.1 The NOPs shall make available each of the Key Individuals for purposes of staffing the ALT, AMT and APT under this ADA and for purposes of developing the Project Proposal and any Early Works Proposal in the role originally proposed, provided that in the event the NOPs seeks to change any of the Key Individuals on the ALT from that submitted in their RFP Proposal Technical Submission, the NOPs must promptly give Notice to the Owner's Representative of the proposed change and provide the Owner's Representative with sufficient details of the proposed change. The Owner's Representative may seek additional information regarding such request to change.
- 3.6.2 In submitting its RFP Proposal Technical Submission the NOPs acknowledged and accepted that the above obligation endures throughout the term of this ADA and for purposes of their Project Proposal. Any changes to Key Individuals are subject to the terms of this ADA until the termination of this ADA, and thereafter subject to the terms of the PAA.

### **3.7 Sub-Contracting**

- 3.7.1 All subcontracting (of any tier) by the AD Participants must be as agreed by the ALT. For this purpose the ALT may agree criteria for subcontracts (of any tier) which do not need separate notification or agreement under this Section 3.7.1.
- 3.7.2 If any NOP (a “**Relevant NOP**”) or any of its subcontractors (of any tier) enters into a contract with a person who is an Affiliate of that or any other NOP (an “**Affiliated Subcontract**”) the provisions of Section 5 of Schedule 4 (Actual Cost) will apply to the determination of the amount payable to the Relevant NOP for Actual Cost, Overhead and Profit in respect of the Affiliated Subcontract, unless the ALT has previously agreed otherwise in respect of a specific Relevant NOP and its proposed Affiliated Subcontract.

### **3.8 Supply chain protection**

- 3.8.1 Each AD Participant shall ensure that unless agreed otherwise by the Owner’s Representative in writing, all Subcontracts contain provisions:
- 3.8.1.1 requiring the relevant AD Participant to pay the Subcontractor within the timeframes set forth in the Construction Act, except for amounts withheld by reason of legitimate dispute which have been identified to the Subcontractor from whom payment has been withheld;
  - 3.8.1.2 giving the Owner the right to publish the AD Participant’s compliance with its obligation to pay undisputed invoices within the payment period set forth in the Construction Act;
  - 3.8.1.3 which provide that the AD Participant retain holdbacks in compliance with the Construction Act;
  - 3.8.1.4 containing insurance provisions that properly flow down from Section 17 and thereby do not provide for duplication of insurance coverage; and
  - 3.8.1.5 requiring the Subcontractor to include a section to the same effect as this Section 3.8 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the Subcontract.
- 3.8.2 When requested by the Owner’s Representative, the ALT will provide reasonable documentary evidence to the Owner’s Representative of compliance with the obligations set out in this Section 3.8.

## **4 ALLIANCE LEADERSHIP TEAM**

### **4.1 Establishment and composition**

- 4.1.1 The AD Participants shall establish the ALT in accordance with the terms of this ADA, including the AD Establishment Framework.
- 4.1.2 The ALT comprises one (1) representative from each AD Participant (being 4 representatives in total) and each such representative must be a senior member of the relevant AD Participant’s organization. The initial



representatives of the AD Participants on the ALT are identified in Schedule 1 (Team Contact Details).

- 4.1.3 Each of the AD Participants must use its reasonable endeavours to ensure that its representative appointed to the ALT remain as its representative on the ALT for the duration of the AD Phase.
- 4.1.4 The Alliance Director may attend but has no vote at any ALT meetings, and must be given notice of all such meetings as though he or she was an ALT representative of an AD Participant.
- 4.1.5 Any removal or replacement by an AD Participant of its representative appointed to the ALT must be by a replacement representative agreed to by the ALT and with the level of experience and capability in project alliancing considered appropriate by the ALT.
- 4.1.6 Each AD Participant must at all times be represented on the ALT.
- 4.1.7 The primary functions of the ALT are to:
  - 4.1.7.1 establish and ensure the implementation of the strategic leadership and direction of the AD Participants in connection with the Project;
  - 4.1.7.2 establish and implement transparent governance and accountability structures for the AD Participants; and
  - 4.1.7.3 assume responsibility for the performance of the AD Participants under this ADA,

provided that save as expressly stated in this ADA the ALT does not have any collective decision making role under this ADA.

- 4.1.8 The AD Participants acknowledge and agree that the ALT will be responsible for ensuring that all members of the AMT and APT understand the Alliance Charter and the Responsibilities Matrix, and the requirement to perform the Services and any Early Works in accordance therewith.
- 4.1.9 The ALT shall appoint a chairperson. The chairperson must be an AD Participant representative on the ALT.
- 4.1.10 Each AD Participant's representative is authorized to represent and bind their appointer on any matter relating to this ADA.
- 4.1.11 Any ALT representative of the Owner Participant may only represent and bind the Owner Participant in its capacity as such under this ADA, and not in its capacity as the Owner.

## **4.2 ALT meetings**

- 4.2.1 The ALT must hold a meeting at no greater than monthly intervals and otherwise when reasonably required by any AD Participant.
- 4.2.2 Meetings of the ALT must be conducted in accordance with the arrangements specified in the Governance Plan to be developed and approved by the ALT

as part of the AD Establishment Framework, provided that the first meeting of the ALT shall be held no later than ten (10) days after the ADA Commencement Date and that meetings thereafter shall be held on a monthly basis, or as required by the ALT.

- 4.2.3 The AD Participants acknowledge that:
  - 4.2.3.1 the continuous involvement in and attendance at the ALT meetings of the nominated ALT representatives is critical to the successful delivery of the Services and Early Works; and
  - 4.2.3.2 there may be limited circumstances when an ALT representative cannot attend an ALT meeting through reasons beyond his or her reasonable control.
- 4.2.4 Each of the AD Participants has appointed an alternative representative or representatives who may attend an ALT meeting in substitution for a nominated ALT representative in the limited circumstances referred to in Section 4.2.3.2.
- 4.2.5 Each AD Participant's alternative representatives are set out in Schedule 1 (Team Contact Details) and a Party may only change one of its alternative representatives to a replacement alternative representative agreed by the ALT and with the level of experience and capability in project alliancing considered appropriate by the ALT.
- 4.2.6 Where an alternative representative attends an ALT meeting in accordance with this Section 4.2, that substitute, alternate or delegate has the powers of an ALT representative as if they were appointed by a Participant as an ALT representative under Section 4.1.
- 4.2.7 Each ALT representative that attends an ALT meeting has a positive obligation to ensure that any non-attending ALT representative from his or her respective AD Participant is fully briefed on the business conducted at the ALT meeting such that they can understand and support each decision of the ALT at that ALT meeting.

#### **4.3 Attendance of Third Parties at ALT meetings**

- 4.3.1 The ALT may agree to invite:
  - 4.3.1.1 the Owner's Representative;
  - 4.3.1.2 any person representing any Party (including the Owner);
  - 4.3.1.3 any Subcontractor (including an Implementation Works Subcontractor); and/or
  - 4.3.1.4 any subcontractor, designer or supplier of any tier of any Subcontractor,

to attend any ALT meeting and make representations to the ALT.
- 4.3.2 If requested to do so by any Party, the ALT must invite any person to attend and make representation to an ALT meeting in accordance with Section 4.3,

unless the ALT agrees that any such request is unreasonable or would create a conflict of interest having regard to the matters to be discussed at that meeting.

- 4.3.3 Any person attending an ALT meeting pursuant to Sections 4.3.1 or 4.3.2 has no voting rights.

#### **4.4 Attendance of an alliance facilitator at ALT meetings**

The ALT may from time to time appoint a non-voting independent person as an alliancing facilitator to attend meetings of the ALT and the cost of such a facilitator will be Actual Cost.

#### **4.5 ALT decisions must be unanimous**

- 4.5.1 All decisions of the ALT must be unanimous.

- 4.5.2 No decision can be made by the ALT unless:

- 4.5.2.1 a representative of each Participant is present at the meeting;
- 4.5.2.2 it is within the matters contemplated by this ADA and is made in accordance with this ADA; and
- 4.5.2.3 it is recorded in writing.

#### **4.6 Implementing ALT decisions**

- 4.6.1 Subject to Section 4.6.2, each Participant must comply with all ALT decisions.

- 4.6.2 If a Participant considers that compliance with an ALT decision would cause the Participant or a Participant's officer, director, agent, or employee to do or omit to do anything that contravenes:

- 4.6.2.1 any law or Statutory Requirement; or
- 4.6.2.2 that Participant's constituent statute, constitution, memorandum, articles of association or articles of incorporation,

that Participant need not comply, but must immediately give notice in writing to the remaining Participants providing the details of the law or Statutory Requirement, or the Participant's constituent statute, constitution, by-laws or articles of incorporation or formation, as the case may be, that will be so contravened and, where appropriate, the ALT will then make a further decision in respect of the relevant matter.

#### **4.7 Consultation with others**

- 4.7.1 The Participants recognize the importance of having access to all appropriate resources, information and/or skills to determine certain matters under this Agreement which are required to be determined on a Best For Project basis in accordance with the VFM Statement.

- 4.7.2 In particular, the Participants acknowledge that to achieve the VFM Statement, acting on a Best For Project basis and complying with the commitments at Section 3, they will need to take into account the Owner's reasonable

operational, maintenance and safety requirements for using or taking over any Works and their interface with other infrastructure (including with other projects).

#### **4.8 Disclosure of conflict of interest**

- 4.8.1 An AD Participant's representative on the ALT, AMT or APT (as the case may be) must fully disclose to an ALT, AMT or APT meeting (as the case may be) any conflicting interest or duty, or potential conflict of interest or duty, the representative may have (whether personally or as a representative) before participating in a discussion on any relevant issue or making a decision about that issue.
- 4.8.2 An AD Participant's representative who has made full disclosure under Section 4.8.1 may fully participate in any discussion and decision, even though the representative has or may have a conflicting interest or duty.
- 4.8.3 For the purposes of this Section 4.8.3, a conflict of interest will include any corporate or other objective or affiliations of an AD Participant that could reasonably be considered to have an adverse impact on the achievement of either or both of the VFM Statement or the Alliance Objectives.
- 4.8.4 A conflict of interest is not created merely by the fact that a representative is an appointee and/or an employee of an AD Participant.

### **5 RESOLUTION OF ISSUES**

#### **5.1 General**

- 5.1.1 The AD Participants acknowledge and agree that, by the AD Participants making the commitments set out in Section 3 of this ADA, any Issues which may arise between the AD Participants under this ADA will be minimized, if not eliminated.
- 5.1.2 Each AD Participant agrees to immediately notify the other interested AD Participants of any matter which may amount to or result in an Issue between the AD Participants in relation to this ADA.
- 5.1.3 An Issue that arises in connection with this ADA will be resolved, wherever possible, at the level where the Issue initially arises.

#### **5.2 Referral to ALT**

- 5.2.1 If, within five (5) Business Days of an Issue being notified to an AD Participant under Section 5.1.2, it has not been resolved by the interested AD Participants, then the Issue will be referred to the ALT.
- 5.2.2 The ALT will attempt to resolve the Issue (including by reducing the resolution to writing signed by all members of the ALT) within five (5) Business Days of the Issue being referred to the ALT. The Issue will not be taken to have been resolved by the ALT until the resolution has been reduced to writing signed by all members of the ALT and will not be binding on the AD Participants until so reduced to writing and signed.

### **5.3 Adjudication**

- 5.3.1 Without limiting Section 20.1, and subject to prior compliance with Section 5.2.1 and 5.2.2 above, the Parties may engage in adjudication proceedings as required by, and in accordance with, the Construction Act and this ADA.
- 5.3.2 The following procedures shall apply to any adjudication the Parties engage in under the Construction Act:
- 5.3.2.1 any hearings shall be held in Toronto;
  - 5.3.2.2 the adjudication shall be conducted in English;
  - 5.3.2.3 each Party may be represented by legal counsel throughout the adjudication;
  - 5.3.2.4 there shall not be any oral communications with respect to the issues in dispute that are the subject of the adjudication between a Party and an adjudicator unless it is made in the presence of all interested Parties and their legal representatives; and
  - 5.3.2.5 a copy of all written communications between the adjudicator and a Party shall be given to all other Parties at the same time.
- 5.3.3 The Parties hereby consent and agree that counterclaims, claims of set-off or the exercise or use of other contractual rights that permit the Owner to withhold, deduct or retain from monies otherwise owed to a NOP under this ADA may be referred to and included as part of an adjudication under the Construction Act.
- 5.3.4 The Parties hereby consent and agree that Issues or claims related to the termination or abandonment of this ADA or the RFP, as well as any Issues or claims that arise or are advanced following the termination or abandonment of this ADA or the RFP, shall not be referred to adjudication under the Construction Act.
- 5.3.5 The Parties agree that no adjudication may be brought with respect to the subject matter of an Issue unless and until the ALT has attempted to resolve the Issue in accordance with Section 5.2.2.
- 5.3.6 The amount applied for in each Proper Invoice shall not include any amounts included in any Issue claim unless and until the ALT has attempted to resolve the Issue in accordance with Section 5.2.2.
- 5.3.7 The Parties hereby consent and agree to request an extension of the deadline for an adjudicator's determination in accordance with section 13.13(2) of the Construction Act if the cumulative quantum of the redress sought in the applicable notice of adjudication exceeds \$[REDACTED].

### **5.4 Parties to continue to perform**

Subject to any section in this ADA to the contrary, each AD Participant must continue to perform its obligations under this ADA, notwithstanding any Issue under this Section 5.

### **5.5 Survival of Section 5**

Notwithstanding any other provision of this ADA, this Section 5 shall survive the termination or expiry of this ADA.

## **6 ALLIANCE MANAGEMENT TEAM**

### **6.1 Appointment of the Alliance Director**

- 6.1.1 The Owner has selected and appointed the person named in Schedule 1 (Team Contact Details) as the Alliance Director. Any replacement to the Alliance Director shall be appointed by the ALT.
- 6.1.2 The functions and responsibilities of the Alliance Director are described in the Responsibilities Matrix and the Governance Plan to be submitted to the ALT for approval.

### **6.2 Membership of the AMT**

- 6.2.1 Subject to the requirements of this Section 6, the AMT membership will be selected by the Alliance Director and approved by the ALT prior to commencing the Services.
- 6.2.2 Membership of the AMT may only be amended with the approval of the ALT.
- 6.2.3 The AMT must comprise:
  - 6.2.3.1 the Alliance Director;
  - 6.2.3.2 senior individuals drawn from the AD Participants reporting to the Alliance Director;
  - 6.2.3.3 such other persons (representing any Subcontractor or Stakeholder) as the ALT may approve from time to time, provided any such approval may be withdrawn or varied by the ALT at any time on prior notice to the AMT; and
  - 6.2.3.4 provided that at all times there will be at least one representative drawn from each AD Participant on the AMT.

### **6.3 Owner Participant may nominate AMT representatives**

The Owner Participant may at any time by notice to the ALT nominate personnel for inclusion in the AMT (including, for clarity, the Alliance Director).

### **6.4 AD Participants to ensure continuity of membership of the AMT**

- 6.4.1 Each AD Participant must (subject to satisfactory performance by the relevant personnel) use reasonable efforts to ensure that, where appropriate, each person that has been assigned to the AMT by the relevant AD Participant remains as a member of the AMT for the delivery of the Project Proposal or otherwise until the ALT decides that he or she is no longer required for the Project.
- 6.4.2 If a member of the AMT ceases to be a member without the approval of the ALT, then the Owner's Representative may determine that any costs incurred by the AD Participants in replacing that member of the AMT (including any

costs incurred in familiarising the replacement member with the Project) will not be recoverable as Actual Cost under this ADA.

## **6.5 Functions of the AMT**

The AMT must:

- 6.5.1 co-ordinate and administer the AD Phase;
- 6.5.2 manage the various Services to be performed in the AD Phase as set out in Schedule 2 (Services);
- 6.5.3 develop the Project Proposal, including the Target Outturn Cost, in accordance with Schedule 3 (Project Proposal) and the requirements of this ADA;
- 6.5.4 develop any Early Works Proposal in accordance with the terms of this ADA; and
- 6.5.5 perform any other functions as otherwise determined by the ALT from time to time.

## **7 ALLIANCE PROJECT TEAM**

### **7.1 Membership of the APT**

- 7.1.1 Subject to the requirements of this Section 7, an Alliance Project Team must be selected by the AMT prior to commencing the Services.
- 7.1.2 The APT must include personnel drawn from each AD Participant.
- 7.1.3 Membership of the APT may only be amended with the approval of the AMT.

### **7.2 Owner Participant may nominate APT representatives**

The Owner Participant may at any time by notice to the Alliance Director nominate personnel for inclusion in the APT (including nominating some personnel for the purpose of gaining training and experience in alliancing).

### **7.3 AD Participants to ensure continuity of membership of the APT**

- 7.3.1 Each AD Participant must (subject to satisfactory performance by the relevant personnel) use reasonable efforts to ensure that, where appropriate, each person that has been assigned to the APT by the relevant AD Participant remains as a member of the APT for the delivery of the Project or otherwise until the ALT or AMT decides that he or she is no longer required for the Project.
- 7.3.2 If a member of the APT ceases to be a member without the approval of the ALT or the AMT, the Owner's Representative may determine that any costs incurred by that member's AD Participant in replacing that member (including any costs incurred in familiarising the replacement member with the Project) will not be reimbursable as an Actual Cost.

### **7.4 Functions of the APT**

The APT must, under the guidance of the ALT and the AMT, perform:

- 7.4.1 all the functions determined by the ALT and AMT; and
- 7.4.2 the roles and responsibilities designated to the APT in the Responsibilities Matrix and the Governance Plan (once approved by the ALT).

## **8 PROJECT OFFICE**

### **8.1 Provision of Project Office**

The AD Participants must procure a Project Office or Project Offices (as determined by the ALT) to accommodate the AMT and APT for the AD Phase, or such other period as specified by the ALT.

## **9 OWNER'S REPRESENTATIVE**

### **9.1 Distinction between Owner and Owner Participant**

Although the Owner and the Owner Participant are the same entity, throughout this ADA references are made to "Owner" and "Owner Participant" respectively to indicate the distinction between when that entity is acting as the client that is to be supplied with the Services and Early Works, and when it is acting as one of the AD Participants in the development of Estimates, development of the Project Proposal, and delivery of any Early Works.

### **9.2 Owner's Representative**

The Owner may perform certain of its obligations under this ADA through the Owner's Representative named in Schedule 1 (Team Contact Details) and as such person may be replaced from time to time on prior notice by the Owner to the AD Participants.

### **9.3 Participant assistance to Owner's Representative**

The AD Participants will provide all assistance necessary to ensure the Owner's Representative can fulfil the responsibilities, perform those roles and functions and exercise those rights.

### **9.4 Exercise of rights by the Owner**

Having regard to the distinction between when the Owner is acting as the client that is to be supplied with Services and Early Works and when the Owner is acting as one of the AD Participants in the development of Estimates, development of the Project Proposal, and delivery of Early Works, the Parties have agreed that:

- 9.4.1 the ALT must proactively liaise with, communicate with and provide all other assistance necessary to ensure that the Owner's Representative can perform its roles and obligations on behalf of the client in the delivery of the Services and the Early Works;
- 9.4.2 the Owner's Representative must, acting reasonably and to the extent practicable in the circumstances, consult with and have regard to the recommendations of the ALT in exercising its discretions under this ADA (but without limiting any express rights of the Owner under this ADA); and



- 9.4.3 where the Owner is exercising its rights and performing its obligations under this ADA in its role as the client to be supplied with the Services and Early Works (rather than as an AD Participant) then, without limiting the obligations of the Owner Participant and the Owner's Representative under Sections 9.4.1 and 9.4.2, the Owner will not be subject to the commitments made under Section 3.

## **10 TERM**

### **10.1 Commencement**

This ADA commences on the ADA Commencement Date.

### **10.2 Termination**

Subject to the termination rights set out in this ADA, this ADA terminates on the date:

- 10.2.1 if the NOPs are selected as the Successful Proponent in accordance with this ADA, on the date the PAA is executed by the Parties; or
- 10.2.2 contemplated by Section 20.5.

## **11 ESTIMATES**

### **11.1 Request for Estimate**

11.1.1 The Owner's Representative may from time to time during the AD Phase issue a Request for Estimate to the AD Participants for the delivery of Services, including the development of the Project Proposal or any Early Works Proposal(s), in accordance with this Section 11.

11.1.2 Prior to commencing any Services, the AD Participants must obtain the Owner's Representative's approval of a proposal and estimate for the delivery of the Services.

### **11.2 Estimate**

11.2.1 On receipt of a Request for Estimate, the AD Participants must jointly prepare and submit to the Owner's Representative an Estimate in response thereto and in accordance with this ADA.

11.2.2 Such Estimate shall be submitted on or before the date stated in the Request for Estimate unless otherwise agreed by the AD Participants and the Owner's Representative.

11.2.3 The AD Participants will have no liability under this ADA or at all for any failure to deliver an Estimate on or before the relevant date stated in the Request for Estimate or agreed or notified under this Section 11.2.

### **11.3 Content of Estimate**

The Estimate must state:

- 11.3.1 the resources to be engaged by the AD Participants in the delivery of the Services;

- 11.3.2 the process for changing the number and composition of the AD Participants' team for delivering the Services and the approvals required from the Owner's Representative for any changes;
- 11.3.3 the place of work of all members of the AD Participants' team delivering the Services and any office accommodation and facilities required by the AD Participants to deliver the Services;
- 11.3.4 the proposed Schedule of Rates for the delivery of the Services;
- 11.3.5 the estimated Actual Costs and Fee payable by the Owner under this ADA for the provision of the Services, or alternatively the lump sum aggregate fixed cost for provision of the Services (inclusive of Fee) if required by the Request for Estimate ("**Lump Sum Price**");
- 11.3.6 the deliverables to be provided by the AD Participants as an output of the Services;
- 11.3.7 any information, assistance and/or facilities required from the Owner in relation to the contemplated Services;
- 11.3.8 the preliminary Baseline Schedule for delivery of the Project Proposal on or before the Submission Date, or the preliminary Baseline Schedule for delivery of the Early Works Proposal on or before the Early Works Submission Date (as applicable); and
- 11.3.9 any Affiliated Subcontract anticipated as being required to deliver the Services.

#### **11.4 Estimate Approval**

- 11.4.1 Upon receipt of any Estimate submitted by the AD Participants in accordance with this ADA the Owner's Representative must promptly notify the AD Participants whether such Estimate is approved ("**Estimate Approval**") or rejected with reasons. Approval of any Estimate is at the sole and absolute discretion of the Owner's Representative.
- 11.4.2 The AD Participants must not commence the Services (other than the preparation of any Estimate in accordance with this ADA) until the Owner's Representative has issued an Estimate Approval, or a written direction has been issued by the Owner's Representative to proceed with certain specified work prior to receipt of the Estimate.

#### **11.5 Rejection of Estimate**

- 11.5.1 If any Estimate is rejected by the Owner's Representative, the related Request for Estimate is deemed to be withdrawn and the AD Participants must not commence the performance of any of the proposed Services in relation to such Request for Estimate.
- 11.5.2 Following any rejection of an Estimate by the Owner's Representative or withdrawal of a Request for Estimate, the Owner's Representative may submit or re-issue a Request for Estimate in identical or similar terms and the procedure in Sections 11.2 to 11.5.2 will apply to such identical or similar Request for Estimate.

## **11.6 Actual Costs and Fee relating to Estimate**

### **11.6.1 The AD Participants:**

11.6.1.1 are only entitled to recover the Actual Costs and Fee incurred in developing an Estimate (or alternatively the Lump Sum Price) if, when and to the extent the expenditure of such costs are approved by the Owner's Representative pursuant to Section 11.4 and/or the relevant resources have been approved by the ALT, and for the avoidance of doubt the AD Participants have no entitlement to recover or be paid Actual Cost or Fee in relation thereto prior to any such approval or in respect of any Estimate which is not the subject of an Estimate Approval; and

11.6.1.2 except as provided for in Section 11.6.1.1, are not entitled to recovery of any Actual Cost or Fee incurred in relation to the Services prior to the date of the Estimate Approval.

11.6.2 For the avoidance of doubt, but without prejudice to the requirements of this ADA, any approved amount stated in an Estimate for the performance of the Services is an estimate of the anticipated Actual Cost and Fee likely to be incurred by the AD Participants in developing the Project Proposal or Early Works Proposal in accordance with this ADA, and without prejudice to Section 16, Schedule 4 (Actual Cost) and Schedule 5 (Fee) (including the pre-approval of resources):

11.6.2.1 is not intended to be a fixed or lump sum price for developing the Project Proposal or Early Works Proposal, unless otherwise agreed to by the Parties; and

11.6.2.2 the Actual Cost and Fee for the delivery of the Services, including developing the Project Proposal or Early Works Proposal, may be less, the same or more than the corresponding amounts in the Estimate;

subject to any agreed price cap set forth in the Estimate Approval.

11.6.3 In the event that the ALT anticipates that the Actual Cost and Fee likely to be incurred by the AD Participants in developing the Project Proposal or any Early Works Proposal in accordance with this ADA will materially exceed the relevant Estimate, they shall provide the Owner's Representative with advance Notice of same together with a recommendation to the Owner's Representative of any proposed adjustment to the approved Estimate. If the Owner's Representative, in its absolute discretion, provides Notice of approval of the ALT's recommendation, then the Estimate will be revised accordingly. If the Owner's Representative, in its absolute discretion, does not provide Notice of approval of the ALT's recommendation, the ALT must consider the reasons provided for not approving the recommendation and resubmit its recommendation to the Owner's Representative for approval (or otherwise).

## **12 PROPOSAL DEVELOPMENT**

### **12.1 Development of Project Proposal**

- 12.1.1 The Project Proposal must be developed by the AD Participants in accordance with Sections 12.1 and 12.2.
- 12.1.2 In developing the Project Proposal, the AD Participants working collaboratively must jointly seek to:
  - 12.1.2.1 submit the Project Proposal as soon as reasonably possible and on or before the Submission Date;
  - 12.1.2.2 develop the Project Proposal having regard to the information, details and documentation set out in Schedule 3 (Project Proposal);
  - 12.1.2.3 develop the Project Proposal to take account of any notified Implementation Works;
  - 12.1.2.4 develop the Project Proposal to take account of any Early Works undertaken by the AD Participants;
  - 12.1.2.5 develop the Project Proposal to meet the requirements of the PAA and the obligations and liabilities of the Participants under the Project Alliance Agreement;
  - 12.1.2.6 establish the parts of the works and services forming the Works to be undertaken by each of the Alliance NOPs and by the Owner Participant;
  - 12.1.2.7 confirm or develop the VFM Statement;
  - 12.1.2.8 determine any additional permanent lands required to be acquired by the Owner, pursuant to the process set forth in Section 12.1.8;
  - 12.1.2.9 determine the rates, prices and resources required to determine the Target Outturn Cost (or any part thereof) in accordance with Schedule 8 (Target Outturn Cost);
  - 12.1.2.10 develop the estimate of the aggregate Actual Cost for each Alliance NOP;
  - 12.1.2.11 develop the estimate of the aggregate Actual Cost for the Owner Participant (including any Owner costs expressly deemed to be an Owner Participant Actual Cost pursuant to the PAA);
  - 12.1.2.12 develop the proposed Risk and Contingency Provision for all the Participants to form part of the proposed Target Outturn Cost in accordance with Schedule 8 (Target Outturn Cost); and
  - 12.1.2.13 develop the estimate of the aggregate Fee for each Alliance NOP in accordance with Schedule 8 (Target Outturn Cost).
- 12.1.3 The Project Proposal must, at a minimum, incorporate the information, details and documentation set out in Schedule 3 (Project Proposal).
- 12.1.4 At any time prior to the Submission Date, the Owner's Representative may advise the ALT in writing of any additional documents or further information

that the Owner's Representative reasonably requires to be incorporated into the Project Proposal. Where the Owner's Representative makes such a request:

- 12.1.4.1 the ALT must incorporate the additional documents or further information into the Project Proposal; and
  - 12.1.4.2 if such request is made after the date which is four (4) weeks prior to the Submission Date, the request will be treated as a Scope Variation for purposes of Section 12.9, and the Owner's Representative will (upon recommendation from the ALT) make such adjustment (if any) to the Submission Date and Key Performance Indicators in Schedule 13 (Performance Incentivization Regime) as may be reasonable having regard to the nature and extent of the additional material to be incorporated into the Project Proposal.
- 12.1.5 Once the Project Proposal has been developed by the ALT, the ALT must submit the Project Proposal to the Owner's Representative for approval (or otherwise) in accordance with Section 15.1.
- 12.1.6 The ALT must submit the Project Proposal to the Owner's Representative by no later than the Submission Date.
- 12.1.7 [INTENTIONALLY DELETED]**
- 12.1.8 As early as reasonably practicable after the ADA Commencement Date, and in any event prior to submission of the Project Proposal, the AD Participants may propose, by written request to the Owner's Representative, that the Owner acquire ownership of or a permanent licence, easement or right of access over additional permanent lands, which, in the opinion of the AD Participants, is required for the Project and delivery of the Works (each, an "**Additional Permanent Lands Request**"). The AD Participants shall include in each Additional Permanent Lands Request, for each of the additional permanent lands requested, supporting reasons, justifications and detailed plans, evidencing, at a minimum, (a) the reasons why each of the proposed additional permanent lands are required for the Project and for the delivery of the Works; and (b) that the lands, if acquired, would be sufficient, but not excessive, to achieve the objective described in Section 12.1.8(a). In addition, the AD Participants shall provide the Owner's Representative with such additional information as the Owner's Representative may request from time to time in relation to the Additional Permanent Lands Request. The Owner may, in its sole and absolute discretion, accept or reject any Additional Permanent Lands Request, or prescribe conditions, restrictions and requirements in connection with its agreement to an Additional Permanent Lands Request. In the event the Owner agrees to an Additional Permanent Lands Request, such additional land so acquired (whether by way of ownership interest, licence rights, easement or otherwise) by the Owner (the "**Additional Owner Permanent Lands**") will become part of the Lands once such lands are acquired by the Owner. The costs to the Owner of obtaining any Additional Owner Permanent Lands under this Section 12.1.8 are not to be considered as Actual Cost of the Owner Participant under this ADA.

## **12.2 Warranties in respect of the Project Proposal**

Each NOP warrants that it will:

- 12.2.1 exercise Diligence in the development of all aspects of the Project Proposal, and that it will ensure that its employees, contractors and consultants exercise such Diligence;
- 12.2.2 examine and verify the VFM Statement to the extent necessary for the preparation and submission of the Project Proposal under this ADA;
- 12.2.3 prepare the Project Proposal with the other AD Participants and the ALT that it honestly and genuinely believes will achieve the VFM Statement; and
- 12.2.4 develop the Project Proposal on the principles that:
  - 12.2.4.1 the Target Outturn Cost will be developed applying first principles estimating procedures utilizing a pricing structure that has been approved by the Owner's Representative and each NOP will collaborate in good faith with the ALT and AMT to determine the reasonable and realistic level of resources, rates and prices required to compile the proposed Target Outturn Cost;
  - 12.2.4.2 all efforts by the NOPs will be open, transparent and collaborative;
  - 12.2.4.3 all technical solutions will be robust, meet the Owner's requirements as set out in the Request for Estimate, and will satisfy the requirements of the VFM Statement;
  - 12.2.4.4 to the extent possible, all estimates of production rates, plant, equipment, materials and subcontract procurement costs will be validated by competitive market testing, or will otherwise be established by benchmarking to current industry best practice;
  - 12.2.4.5 all innovations and technical solutions identified by the NOPs in developing the Project Proposal will be incorporated into the Project Proposal and considered in determining the Risk and Contingency Provision;
  - 12.2.4.6 the NOPs will collaborate in good faith to establish a risk register and QRA evaluation of the risks identified for the purpose of determining a joint contingency and risk value for inclusion in the Risk and Contingency Provision and the TOC Validation Report, utilizing a risk evaluation model and tool that has been approved by the Owner's Representative;
  - 12.2.4.7 there will be a genuine commitment to innovation and continuous improvement in the development of the Project Proposal and to satisfying the requirements of the VFM Statement;
  - 12.2.4.8 the Services will be performed in accordance with this ADA;
  - 12.2.4.9 the Works will be performed in accordance with the Project Alliance Agreement; and
  - 12.2.4.10 take into account and allow for the interface with any Implementation Works and Early Works, including in relation to all of the matters referred to in Sections 12.2.4.1 to 12.2.4.9 above.

## **12.3 Development of Early Works Proposals**

- 12.3.1 Early Works Proposals must be developed by the ALT in accordance with Sections 12.3 and 12.4.
- 12.3.2 In developing any Early Works Proposal, the ALT working collaboratively must jointly seek to:
  - 12.3.2.1 submit the Early Works Proposal as soon as reasonably possible and on or before the Early Works Submission Date;
  - 12.3.2.2 develop the Early Works Proposal so as to meet the Evaluation Criteria set forth in the relevant Request for Estimate;
  - 12.3.2.3 develop the Early Works Proposal to take account of any notified Implementation Works;
  - 12.3.2.4 establish the parts of the works and services forming the Early Works to be undertaken by each of the AD Participants;
  - 12.3.2.5 develop the estimate of the aggregate Actual Cost for each AD Participant;
  - 12.3.2.6 develop the estimate of the aggregate Fee for each NOP to form part of the total cost of the Early Works; and
  - 12.3.2.7 submit a Baseline Schedule for delivery of the Early Works in accordance with the schedule requirements set forth in the Request for Estimate.
- 12.3.3 The Early Works Proposal must, at a minimum, incorporate the information, details and documentation set out in the applicable Request for Estimate.
- 12.3.4 At any time prior to the Early Works Submission Date, the Owner's Representative may advise the ALT in writing of any additional documents or further information that the Owner's Representative reasonably requires to be incorporated into the Early Works Proposal and the ALT must incorporate the additional documents or further information into the Early Works Proposal.
- 12.3.5 Once the Early Works Proposal has been developed by the ALT, the AD Participants must submit the Early Works Proposal to the Owner's Representative for approval (or otherwise) in accordance with Section 12.1.5.
- 12.3.6 The AD Participants must submit the Early Works Proposal to the Owner's Representative by no later than the Early Works Submission Date.
- 12.3.7 Notwithstanding any other provision in this ADA, the AD Participants have no liability to the Owner or to each other under this ADA or otherwise in respect of any failure to submit the Early Works Proposal by the Early Works Submission Date.

## **12.4 NOP warranties in respect of Early Works Proposals**

Each NOP warrants that it will:

- 12.4.1 exercise Diligence in the development of all aspects of the Early Works Proposal, and that it will ensure that its employees, contractors and consultants exercise such Diligence;
- 12.4.2 examine and verify the VFM Statement to the extent necessary for the preparation and submission of the Early Works Proposal under this ADA;
- 12.4.3 develop the Early Works Proposal on the principles that:
  - 12.4.3.1 the estimate of Actual Cost and Fee for the Early Works will be developed applying first principles estimating procedures utilizing a pricing structure that has been approved by the Owner's Representative and each NOP will collaborate in good faith with the ALT to determine the reasonable and realistic level of resources, rates and prices required to compile the proposed estimate of Actual Cost and Fee for completion of the Early Works;
  - 12.4.3.2 all efforts by the NOPs will be open, transparent and collaborative;
  - 12.4.3.3 all technical solutions will be robust, meet the Owner's requirements as set out in the relevant Request for Estimate, and will satisfy the requirements of the VFM Statement to the extent applicable;
  - 12.4.3.4 to the extent possible, all estimates of production rates, plant, equipment, materials and subcontract procurement costs will be validated by competitive market testing, or will otherwise be established by benchmarking to current industry best practice;
  - 12.4.3.5 all innovations and technical solutions identified by the NOPs in developing the Early Works Proposal will be incorporated into the Early Works Proposal and considered in determining any risk and contingency provision;
  - 12.4.3.6 the NOPs will collaborate in good faith with the ALT to establish a risk register and QRA evaluation of the risks identified for the purpose of determining a joint contingency and risk value for inclusion in the Early Works Proposal, utilizing a risk evaluation model and tool that has been approved by the Owner's Representative.
  - 12.4.3.7 there will be a genuine commitment to innovation and continuous improvement in the development of the Early Works Proposal and to satisfying the requirements of the VFM Statement to the extent applicable;
  - 12.4.3.8 the Early Works will be performed in accordance with Schedule 11 (Early Works) and the relevant sections of the Project Alliance Agreement referred to therein; and
  - 12.4.3.9 take into account and allow for the interface with any Implementation Works, including in relation to all of the matters referred to in Sections 12.4.3.1 to 12.4.3.8.

## **12.5 Consideration of Early Works Proposals**



As soon as practicable following submission of an Early Works Proposal, the Owner's Representative will:

- 12.5.1 review and evaluate the Early Works Proposal developed by the ALT and submitted to the Owner's Representative against the requirements set forth in the Request for Estimate or otherwise notified by the Owner's Representative to the ALT;
- 12.5.2 consider the views, comments and responses of the Owner's ALT representative;
- 12.5.3 comment upon the adequacy or otherwise of the Early Works Proposal and make such suggestions as to the adequacy thereof, including the estimated Actual Costs and aggregate Fee in respect of such Early Works;
- 12.5.4 request the ALT to address the Owner's Representative's comments and make adjustments to any draft or proposed Early Works Proposal to reflect or take into account those comments;
- 12.5.5 within a reasonable time of having received the Early Works Proposal determine whether the Early Works Proposal is acceptable to the Owner; and
- 12.5.6 within a reasonable time of having made a decision, notify the AD Participants in writing of its decision,

and the ALT must honestly and openly answer any questions which the Owner's Representative and any of its independent consultants may have in connection with the Early Works Proposal in a manner consistent with the AD Participants' commitments under Section 3 of this ADA.

## **12.6 Decision of the Owner in respect of Early Works Proposals**

- 12.6.1 If, following consideration of an Early Works Proposal under Section 12.5, the Owner's Representative notifies the AD Participants in writing under Section 12.5.6 that:
  - 12.6.1.1 the Owner accepts an Early Works Proposal, then Section 12.7 will apply; or
  - 12.6.1.2 the Owner rejects an Early Works Proposal, then Section 12.8 will apply.
- 12.6.2 For the avoidance of doubt, the Owner is not bound to accept any Early Works Proposal notwithstanding that the AD Participants have met any applicable evaluation criteria and satisfied all other requirements of the Owner and this ADA, and acceptance of any Early Works Proposal is entirely a decision for the Owner to make at its sole and absolute discretion.

## **12.7 Consequences of acceptance of an Early Works Proposal**

If the Owner accepts an Early Works Proposal under Section 12.6.1.1, the AD Participants will cause the Early Works to be performed in accordance with the Early Works Proposal and Schedule 11 (Early Works) and the relevant sections of the Project Alliance Agreement referred to therein.

## **12.8 Consequences of rejection of an Early Works Proposal**

If the Owner rejects an Early Works Proposal under Section 12.6.1.2, the NOPs must immediately cease to perform any Services relating to such Early Works Proposal on the date of notification by the Owner's Representative to the AD Participants under Section 12.5.6.

## **12.9 Scope Variations**

12.9.1 The Owner's Representative may from time to time by notice to the ALT amend any Request for Estimate by the addition or omission of any scope, work, services, requirement or constraint required in the development of the relevant Project Proposal or Early Works Proposal ("**Scope Variation**").

12.9.2 In the event of a Scope Variation under this Section 12.9, the Submission Date or Early Works Submission Date, as applicable, for the relevant Estimate will be adjusted on a fair and reasonable basis by the Owner's Representative and promptly notified to the ALT and any Issue arising from the Scope Variation will be resolved in accordance with Section 5.

## **12.10 Ownership of Project Proposal and Early Works Proposal**

Subject to Section 19, ownership of the Project Proposal, any Early Works Proposal and all documentation and information comprising the Project Proposal, any Early Works Proposal and/or prepared for the purposes of the Project Proposal or any Early Works Proposal (collectively, the "**Information**"), immediately vests in the Owner upon its creation and the NOPs shall have no right to:

12.10.1 use any part of the Project Proposal, any Early Works Proposal or the Information without the Owner's prior written approval; or

12.10.2 disclose any part of the Project Proposal, any Early Works Proposal or the Information without the Owner's prior written approval, except as permitted in Section 22.9.

# **13 PROVISION OF INFORMATION BY THE OWNER AND THE OWNER'S REPRESENTATIVE**

## **13.1 Presentations by Owner's Representative**

The Owner's Representative may, from time to time, make presentations (or arrange for others to make presentations) to the AD Participants of information relevant to the preparation of the Project Proposal and any Early Works Proposal.

## **13.2 Type of Information**

On reasonable prior notice, the Owner will endeavour to provide to the AD Participants such information which:

13.2.1 the AD Participants reasonably require to perform the Services in accordance with this ADA;

13.2.2 the Owner would ordinarily disclose to contractors and consultants undertaking on its behalf works and services similar to those required by the Project;

- 13.2.3 is in the Owner's possession, custody or control; and
- 13.2.4 the Owner is not prevented from disclosing by any relevant:
  - 13.2.4.1 law;
  - 13.2.4.2 third party rights;
  - 13.2.4.3 regulatory requirements; and
  - 13.2.4.4 corporate governance policies or guidelines,

provided that the Owner's Representative will in its discretion determine whether or not the criteria in this Section 13.2 are satisfied.

### **13.3 Warranty for information provided by the Owner**

- 13.3.1 Save as set out in Section 13.2, the Owner gives no warranty as to the availability of information, including information available to the Owner's Representative or to the Owner's independent advisors.
- 13.3.2 The AD Participants acknowledge that they will exchange information and advice about the Works and the performance of the Works from the ADA Commencement Date to the date of submission of the Project Proposal. To avoid the possibility of issues arising between the AD Participants in respect of the need for any subsequent alterations to the Target Outturn Cost, the AD Participants must undertake their own inquiries to satisfy themselves so far as reasonably practicable as to the accuracy, completeness and relevance of that information or advice.

## **14 INDEPENDENT ADVISORS**

### **14.1 Appointment of Owner's advisors**

The AD Participants acknowledge and accept that the Owner or the Owner's Representative (on behalf of the Owner) may appoint advisors including:

- 14.1.1 a fairness monitor;
- 14.1.2 a financial auditor;
- 14.1.3 a technical advisor; and
- 14.1.4 legal advisors,

to be accountable independently and directly to the Owner and/or the Owner's Representative to validate the Project Proposal, to perform any task required by the Owner or the Owner's Representative and to provide independent reports and validation of any aspect of the Project Proposal.

### **14.2 Advisor for TOC**

Without limiting Section 14.1, the Owner or the Owner's Representative may engage the services of an independent advisor to:

- 14.2.1 review the preparation of each element of the Target Outturn Cost by the ALT and verify all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations and contingencies used or included in the Target Outturn Cost prepared as part of the Project Proposal; and
- 14.2.2 provide a report to the Owner and/or Owner's Representative in respect of the Target Outturn Cost.

#### **14.3 Co-operation with advisors**

The AD Participants agree, in the spirit of the commitments they have made in Section 3 and elsewhere in this ADA, to:

- 14.3.1 provide the Owner, the Owner's Representative and any of their independent advisors with full access to all records and the basis of all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations and contingencies referred to above during the investigations and the preparation of the Target Outturn Cost; and
- 14.3.2 fully co-operate with and assist the Owner, the Owner's Representative and their advisors to ensure that the Owner, the Owner's Representative and any such advisors are able to effectively and expeditiously carry out their duties.

#### **14.4 Open book**

In preparing the Target Outturn Cost, the AD Participants commit to an "open book" approach, meaning that, without limiting Section 3.4, the Owner and the Owner's Representative can have access to all records, information and data in the possession of the AD Participants which in any way has a bearing on the Target Outturn Cost. This aspect of the open book philosophy must be carried forward by the AD Participants into all aspects of costing and accounting.

#### **14.5 Honest and open answers**

The AD Participants must honestly and openly answer any questions the Owner's independent advisors, the Owner's Representative or the Owner may have in connection with the Project Proposal (including the Target Outturn Cost) in a manner consistent with the AD Participants' commitments under Section 3 of this ADA.

#### **14.6 Costs for Owner's advisors**

The Owner must bear all of the costs of any independent advisors appointed under this Section 14.

### **15 SELECTION OF SUCCESSFUL PROPONENT**

#### **15.1 Consideration of the Project Proposal**

As soon as practicable following submission of the Project Proposal, the Owner's Representative will:

- 15.1.1 review and evaluate the Project Proposal developed by the ALT and submitted to the Owner's Representative against the requirements set forth in Schedule 3 (Project Proposal) and any evaluation criteria set out in the Request for

Estimate or otherwise notified by the Owner's Representative to the ALT ("**Evaluation Criteria**");

- 15.1.2 review any comments in respect of the Project Proposal received from the Owner and from any of its independent advisors, including any report in respect of the Project Proposal (including the Target Outturn Cost) provided to the Owner or the Owner's Representative by an independent advisor in accordance with Section 14;
- 15.1.3 consider the views, experiences and responses of the Owner's ALT representative and other key stakeholders of the Owner in respect of the behavior of the NOPs during the AD Phase;
- 15.1.4 comment upon the adequacy or otherwise of the Project Proposal and make such suggestions as to the adequacy thereof, including the Target Outturn Cost;
- 15.1.5 subject to Section 15.2, request the ALT to address the Owner's Representative's comments and make adjustments to any draft or proposed Project Proposal to reflect or take into account those comments;
- 15.1.6 without limiting the Owner's rights under the Request for Proposals or otherwise, within a reasonable time of having received the Project Proposal determine whether the Proponent is selected as the Successful Proponent; and
- 15.1.7 within a reasonable time of having made a decision, notify the AD Participants in writing of its decision,

and the ALT must honestly and openly answer any questions which the Owner's Representative and any of its independent consultants may have in connection with the Project Proposal in a manner consistent with the AD Participants' commitments under Section 3 of this ADA.

## **15.2 Further Services**

The AD Participants shall continue to provide Services in connection with the submitted Project Proposal (whether in connection with any development, re-submission or revision thereof or otherwise) and the NOPs are entitled to payment for such Services in accordance with this ADA to the extent that:

- 15.2.1 there is any unutilized balance of expenditure previously approved by the Owner's Representative under the Estimate Approval in respect of the Project Proposal;
- 15.2.2 the relevant Estimate Approval in respect of the Project Proposal is revised or amended to take account of such ongoing Services; and/or
- 15.2.3 such further Services are otherwise approved in writing by the Owner's Representative,

and, for the avoidance of doubt, the NOPs are not required to carry out any further Services under this Section 15.2 in relation to the Project Proposal unless and to the extent that the Actual Cost and Fee relating to such Services are recoverable in accordance with this Section 15.2.

### **15.3 Decision of the Owner**

- 15.3.1 If, following consideration of the Project Proposal under Section 15.1, the Owner's Representative notifies the AD Participants in writing under Section 15.1.7 that:
- 15.3.1.1 the Owner accepts the Project Proposal, then Section 15.4 will apply; or
  - 15.3.1.2 the Owner rejects the Project Proposal, then Section 15.5 will apply.
- 15.3.2 For the avoidance of doubt, the Owner is not bound to accept the Project Proposal notwithstanding that the AD Participants have met the Evaluation Criteria and satisfied all other requirements of the Owner and this ADA, and acceptance of the Project Proposal is entirely a decision for the Owner to make at its sole and absolute discretion.

### **15.4 Consequences of acceptance of the Project Proposal**

- 15.4.1 If the Owner accepts the Project Proposal under Section 15.3.1.1:
- 15.4.1.1 the NOPs will be deemed to be the Successful Proponent under the RFP; and
  - 15.4.1.2 the NOPs (as Alliance NOPs) and the Owner (as Owner and Owner Participant) shall proceed to execute the PAA substantially in the form attached to this ADA, with such detail as is specified in the accepted Project Proposal inserted and in compliance with the terms and conditions set forth in Schedule 7 (Completion Documents) within 20 Business Days of the date of notification by the Owner's Representative to the AD Participants under Section 15.1.7.
- 15.4.2 The NOPs acknowledge and agree that if the NOPs fail to execute the PAA within the period specified in Section 15.4.1.2:
- 15.4.2.1 the Owner may enter into an alliance development agreement with the Second Ranked AD Phase Proponent (as defined in the RFP) and proceed to execute a PAA with the other Second Ranked AD Phase Proponent in accordance with such alliance development agreement;
  - 15.4.2.2 the NOPs shall not be entitled to payment by the Owner of any Performance Reward Amount arising under this ADA;
  - 15.4.2.3 the NOPs shall remain obligated to promptly make payment to the Owner of any Performance Liability Amount arising under this ADA; and
  - 15.4.2.4 the NOPs shall be liable to the Owner for any additional costs, losses, damages or claims suffered by the Owner as a consequence of or arising from such Wilful Default, subject to the cap on liability set forth in Section 18.8.1.

15.4.3 In order to remove doubt, the NOPs cannot require any amendments to the form of the PAA after the date of submission of its Project Proposal.

15.4.4 The AD Participants shall continue to undertake Work in connection with any submitted and approved Early Works Proposal and the NOPs are entitled to payment for such work or services in accordance with this ADA.

## **15.5 Consequences of not accepting the Project Proposal**

15.5.1 If the Owner rejects the Project Proposal under Section 15.3.1.2, the NOPs shall immediately cease to perform the Services on the date of notification by the Owner's Representative to the AD Participants under Section 15.1.7.

15.5.2 Notwithstanding that the Project Proposal has been rejected by the Owner, the Project Proposal remains valid and capable of acceptance by the Owner until the date that is ninety (90) days from the Submission Date.

15.5.3 If the Owner elects to accept the Project Proposal within the time period referred to in Section 15.5.2, the provisions of Section 15.4 will apply, *mutatis mutandis*, and the NOPs will be deemed to be the Successful Proponent.

15.5.4 If the time period referred to in Section 15.5.2 expires prior to the Owner electing to accept the Project Proposal, this ADA terminates on the date of expiry of that period.

15.5.5 Notwithstanding Section 15.5.1, the Owner's Representative may instruct the AD Participants to continue to undertake Work in connection with any submitted and approved Early Works Proposal and the NOPs are entitled to payment for such work or services in accordance with this ADA.

## **15.6 Acknowledgements**

The NOPs acknowledge and agree that:

15.6.1 there is no guarantee that the Owner will elect to accept the Project Proposal;

15.6.2 the process in this ADA for considering the Project Proposal and selecting the Successful Proponent supplements the process contained in the Request for Proposal. If there is any inconsistency or ambiguity between this ADA and the Request for Proposal, that inconsistency or ambiguity will be resolved by the Owner in its absolute discretion;

15.6.3 there are a number of Authorizations that are required to be obtained by the Owner prior to the selection of the Successful Proponent and execution by the Owner of the PAA (if that occurs) which may not be given or which may be given on terms which are not acceptable to the Owner, in which case, in the Owner's absolute discretion, the Successful Proponent will not be selected and the PAA will not be executed by the Owner;

15.6.4 the Project Proposal and the NOPs' commitments and obligations under this ADA remain unaffected notwithstanding:

15.6.4.1 the Owner's co-operation and participation in the development of the Project Proposal, including the involvement of the Owner's

Representative, the ALT, the AMT, the APT and any independent advisors appointed by any of them; and

15.6.4.2 any receipt or review of, or comment or direction on, the development of the Project Proposal or of the inputs into the Project Proposal by the Owner, the Owner's Representative, the ALT, the AMT, the APT and any independent advisors appointed by any of them, during the AD Phase or at any other time, or any failure by the Owner, the Owner's Representative, the ALT, the AMT, the APT and any independent advisors appointed by any of them or anyone acting on behalf of the Owner to receive or review or provide comment or direction on the development of any Estimate, the Project Proposal or of any inputs into the Project Proposal;

15.6.5 nothing in this ADA may be construed as an indication or representation to the NOPs by the Owner that the NOPs will be selected as the Successful Proponent. The Owner is not liable for any loss or damage suffered by the NOPs arising from the NOPs not being selected as the Successful Proponent except for the payment of Actual Cost and Fee in accordance with Schedule 4 (Actual Costs) and Schedule 5 (Fee), and paid under Schedule 12 (Payment Procedures).

## 16 PAYMENTS

### 16.1 General principles of payment

- 16.1.1 Payments are determined and made to or by each NOP individually.
- 16.1.2 Actual Cost determined in respect of the Owner Participant under this ADA are not payments made and are accounted for as notional payments for determining the sum of total ADA Actual Costs and Fees and the PAA Target Outturn Cost for the purposes of the Performance Incentivization Regime.
- 16.1.3 For the purpose of this ADA, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the details of the transfer.
- 16.1.4 The AD Participants acknowledge and agree that the total aggregate of all costs under this ADA in respect of the Works, including Actual Cost, Fee and any Performance Reward Amount (collectively, "**Total Contract Costs**") shall not exceed \$[REDACTED] (the "**Contract Limit**"). In the event that the ALT anticipates that Total Contract Costs likely to be incurred by the AD Participants will exceed the Contract Limit, they shall provide the Owner's Representative with advance Notice of same together with a recommendation to the Owner's Representative of any proposed adjustment to the Contract Limit. If the Owner's Representative, in its sole and absolute discretion, provides Notice of approval of the ALT's recommendation, then the Contract Limit will be revised accordingly. If the Owner's Representative, in its sole and absolute discretion, does not provide Notice of approval of the ALT's recommendation, the ALT must take steps to ensure that Total Contract Costs will not exceed the Contract Limit. For the avoidance of doubt, the Owner shall not be liable to any NOP for payment of any further, additional or ongoing Actual Costs, Fee or Performance Reward Amount in the event Total Contract Costs exceed the Contract Limit.



## **16.2 Payments**

- 16.2.1 Payments of Actual Cost and Fee are to be determined in accordance with Schedule 4 (Actual Cost) and Schedule 5 (Fee) and paid under Schedule 12 (Payment Procedures).
- 16.2.2 Payments under the Performance Incentivization Regime are to be determined in accordance with Schedule 13 (Performance Incentivization Regime) and paid under Schedule 12 (Payment Procedures).

## **16.3 Sole right to payment**

Unless otherwise expressly provided in this ADA, no matter what events, circumstances, contingencies, conditions, or degree of difficulty is encountered by the AD Participants in performing the Services or Early Works, each NOP's entitlement, and only entitlement, to payment by the Owner for the Services or Early Works is as set out and determined in Schedule 4 (Actual Cost), Schedule 5 (Fee) and Schedule 13 (Performance Incentivization Regime) and paid under Schedule 12 (Payment Procedures).

## **16.4 Payment is not evidence of satisfactory workmanship**

Payment of monies is not evidence of the value of the Services or Early Works, or that the Services or Early Works have been executed satisfactorily, or an admission of liability, and is payment on account only.

## **16.5 Defaults**

If any NOP commits a Default which causes the Owner to terminate this ADA or exclude the NOP, then the NOPs or that NOP (as the case may be) are or is not entitled to any payment under this ADA as a result of such termination or exclusion save in respect of payments due to the date of termination or exclusion.

## **16.6 Audit**

- 16.6.1 The AD Participants must keep and maintain:
  - 16.6.1.1 an adequate internal control system (including policies, controls and procedures) for the effective planning, performance and reporting of the Services and Early Works in accordance with this ADA;
  - 16.6.1.2 books of account kept in accordance with recognized accounting principles which, among other things, clearly show the amounts that are payable by the Owner under this ADA and ledgers solely related to the performance of the Services and Early Works; and
  - 16.6.1.3 all of their records and other documentation referred to in this ADA that relate to the performance of the Services and Early Works, at the principal place of business in Ontario of any NOP.
- 16.6.2 The Alliance Auditor may at any time during the AD Phase and for a period of 12 Months thereafter, audit, inspect, transcribe, investigate or copy, the quality system and the records referred to in Section 16.6.1 and any document prepared or maintained by the AD Participant for the purposes of performing the AD Participant's obligations under this ADA.

- 16.6.3 The AD Participants will provide whatever records, documents, access, facilities or assistance is necessary to conduct whatever audit, inspection, transcription, investigation or copying is required by the Alliance Auditor, provided that in respect of the Owner such access relates only to the audit of any Actual Cost incurred by the Owner or the Owner Participant.
- 16.6.4 In the course of an audit under Section 16.6.2, the Alliance Auditor may:
- 16.6.4.1 review and assess the reliability, integrity, timeliness and accuracy of the financial and operating information relating to the Services and Early Works, and the means and systems used to identify, measure, classify and report such information; and
  - 16.6.4.2 interview relevant staff of the AD Participants .
- 16.6.5 At the conclusion of an audit under Section 16.6.2, the Owner must, acting reasonably, determine the actions (if any) required to be taken by the AD Participants to rectify problems, weaknesses, deficiencies or non-compliance detected during the audit including whether the NOPs must reimburse the Owner for any payments in excess of the value of the Services or Early Works performed.
- 16.6.6 Any records or documents provided to the Alliance Auditor or to which the Alliance Auditor has access to or any information obtained through any audit, inspection or investigation must be treated as Confidential Information in accordance with Section 22.9.
- 16.6.7 If this ADA is terminated, the NOPs must give the Owner's Representative any records referred to in Section 16.6.1. The Owner's Representative must allow the NOPs access to those books of account and records for a period of five (5) years after the last day of the Accounting Period to which the record relates.

## **16.7 Notices from Subcontractors under the Construction Act**

- 16.7.1 The NOPs must:
- 16.7.1.1 promptly give the Owner's Representative a copy of any notice that the NOPs or a NOP receives from a Subcontractor under any section of the Construction Act relating to a notice of non-payment or notice of adjudication; and
  - 16.7.1.2 use reasonable endeavours to ensure that each Subcontractor promptly gives the Owner's Representative a copy of any notice that the Subcontractor receives from any Third Party under the Construction Act relating to notice of non-payment or notice of adjudication.
- 16.7.2 If the Owner become aware that the Subcontractor is entitled to suspend any works or services (which forms part of the Services or Early Works) under any section of the Construction Act, the Owner may (at its absolute discretion) directly pay the Subcontractor such money as is or may be owing to the Subcontractor in respect of works or services forming part of the Services or Early Works. Any amount paid by the Owner will be an Actual Cost and the Owner is not liable to pay the NOPs for the work or services performed by the Subcontractor that are the subject of such payment.

- 16.7.3 For the purposes of this Section 16.7, a reference to:
- 16.7.3.1 a Subcontractor includes any person engaged by a NOP, its subcontractors or any other person to carry out works or services which form part of the Services or Early Works; and
  - 16.7.3.2 works or services refers to all or any part of the Services or Early Works the NOPs are or a NOP is or may be required to provide under this ADA.

## 16.8 Construction liens

- 16.8.1 Each NOP shall cause any and all construction liens and certificates of action relating to the Services or Early Works registered or preserved by any Subcontractor, supplier, employee, or any other party to whom the NOP is or may be responsible at law, and provided the Owner has paid all amounts properly owing under this ADA to the NOP for such Services or Early Works, to be discharged or vacated, or cause to be discharged or vacated, immediately but in any case no later than five (5) Business Days of the date of registration or reservation, all at the NOP's sole expense. The NOP shall not be entitled to receive any payment from the Owner until all such claims for lien and certificates of action have been vacated or discharged.
- 16.8.2 Each NOP shall cause any and all written notices of lien relating to the Services or Early Works given to any person, including, but not limited to, the Owner or the Owner's Representative by any Subcontractor, sub-subcontractor, supplier, employee, or any party to whom the NOP is or may be responsible at law, and provided the Owner has paid all amounts properly owing under this ADA to the NOP for such Services or Early Works, to be withdrawn or vacated, and the NOP shall do so immediately but in any case no later than five (5) Business Days of the written notice of lien having been given, all at the NOP's sole expense.
- 16.8.3 If the NOP fails to discharge or vacate any such lien or certificate of action, or to have any such written notice of lien withdrawn or vacated, within five (5) Business Days, then the Owner shall have the right but not the obligation, to do so and set off and deduct from any amount owing to the NOP, all costs and expenses of so doing, and of defending any related action, including without limitation, the costs of borrowing the appropriate cash, letter of credit or bond as security, and legal fees and disbursements on a full indemnity basis. If there is no amount owing by the Owner to the NOP, then the NOP shall promptly reimburse the Owner for all of the said costs and expenses of so doing.

## 16.9 Bank Account

- 16.9.1 Within five (5) Business Days of the ADA Commencement Date, the NOPs must notify the Owner's Representative in writing of each NOP's nominated bank account for payment by the Owner to each NOP under this ADA ("**Bank Account**").
- 16.9.2 The NOPs may change their Bank Account by notifying the Owner's Representative in writing of the relevant NOP's new nominated bank account for payments by the Owner to that NOP under this ADA provided that any notice under this Section 16.9.2 is given by a NOP to the Owner's

Representative at least ten (10) Business Days prior to the due date for payment under this ADA.

- 16.9.3 Each NOP must for the purpose of Sections 16.9.1 and/or 16.9.2 nominate a different bank account for all payments due or payable to it under this ADA.

#### **16.10 Survival of Section 16**

Notwithstanding any other provision of this ADA, this Section 16 shall survive the termination or expiry of this ADA.

### **17 INSURANCE AND BONDING**

#### **17.1 The Owner insurances**

17.1.1 The Owner shall comply with the provisions of Schedule 9 (Insurance Policies and Bonds).

17.1.2 The Owner will take out on or prior to the ADA Commencement Date and maintain the insurance policies set out in Section 1.1 of Schedule 9 (Insurance Policies and Bonds). The Owner will take out and maintain the insurance policies set out in Section 1.2 of Schedule 9 (Insurance Policies and Bonds) prior to the commencement of any Early Works. The costs reasonably and actually incurred by the Owner in obtaining and maintaining the insurance policies set out in Sections 1.1 and 1.2 of Schedule 9 (Insurance Policies and Bonds) are to be treated as Actual Costs incurred by the Owner Participant. The Owner may, upon request by the ALT, be required to increase the policy limits in respect of the insurances (or any one of them) set out in Sections 1.1 and 1.2 of Schedule 9 (Insurance Policies and Bonds), and the costs reasonably and actually incurred by the Owner in respect of increasing such policy limits are to be treated as Actual Cost incurred by the Owner Participant.

17.1.3 The NOPs acknowledge and agree that when the Owner has taken out the insurance policies set out in Sections 1.1 and 1.2 of Schedule 9 (Insurance Policies and Bonds), the NOPs will accept those insurance policies in full satisfaction of the Owner's obligation to insure as imposed by Section 17.1.2 (as it relates to insurance policies set out in Sections 1.1 and 1.2 of Schedule 9 (Insurance Policies and Bonds)).

17.1.4 Prior to the ADA Commencement Date, the Owner must make available to the AD Participants certificates of insurance evidencing that the insurance policies required to be taken out by it under Section 1.1 of Schedule 9 (Insurance Policies and Bonds) have been taken out and are in full force and effect.

#### **17.2 Insurance to be taken out by each NOP**

17.2.1 Each NOP shall comply with the provisions of Schedule 9 (Insurance Policies and Bonds).

17.2.2 Each NOP must: (i) take out on or prior to the ADA Commencement Date, and maintain, the insurance policies set out in Section 2.1 of Schedule 9 (Insurance Policies and Bonds); and (ii) take out on or prior to the commencement of Early works, and maintain, the insurance policies set out in Section 2.2 of Schedule 9 (Insurance Policies and Bonds).

- 17.2.3 Each NOP is free to take out and maintain any other insurance policies they consider necessary in respect of the Services or Early Works or which they are required to maintain (or cause to be obtained and maintained) by Applicable Law, but the costs of such other insurance policies (including, for clarity, payment of any deductibles thereunder) will not be treated as Actual Cost under this ADA.
- 17.2.4 Prior to the ADA Commencement Date, each NOP must make available to the Owner's Representative, the Owner Participant and each other NOP certificates of insurance evidencing that the insurance policies required to be taken out by it under Section 2.1 of Schedule 9 (Insurance Policies and Bonds) have been taken out and are in full force and effect. Notwithstanding the foregoing, upon request by the Owner's Representative at any time, the NOPs shall provide the Owner's Representative with certified copies of insurance in respect of any insurance policies required to be taken out by it under this Section 17.2.
- 17.2.5 Prior to the commencement of Early Works, each NOP must make available to the Owner's Representative, the Owner Participant and each other NOP certificates of insurance evidencing that the insurance policies required to be taken out by it under Section 2.2 of Schedule 9 (Insurance Policies and Bonds) have been taken out and are in full force and effect. Notwithstanding the foregoing, upon request by the Owner's Representative at any time, the NOPs shall provide the Owner's Representative with certified copies of insurance in respect of any insurance policies required to be taken out by it under this Section 17.2

### **17.3 No limitation due to insurance**

Taking out and maintaining the insurance policies and surety bonds required by this ADA does not in any way limit the liabilities, responsibilities and obligations of any NOP under other provisions of this ADA.

### **17.4 Summary of insurance**

A summary of the insurance policies taken out and maintained by the Owner under Section 17.1 is included in Schedule 9 (Insurance Policies and Bonds) and further details of the Owner's insurance policies will be provided to the NOPs on request.

### **17.5 Insurance claims notification**

Each NOP must comply with the insurance claims notification and handling instructions required by the Owner in respect of the insurance policies referred to in Section 17.1.

### **17.6 Payment of deductibles**

- 17.6.1 Each NOP is responsible for the payment of deductibles applicable to those policies effected by that NOP under Section 17.2 and such payment will be treated as an Actual Cost.
- 17.6.2 With respect to any policy or policies of insurance obtained and maintained by the Owner pursuant to Sections 1.1 and 1.2 of Schedule 9 (Insurance Policies and Bonds), the Owner is responsible for the payment of deductibles applicable to those policies and such payment will be treated as an Actual Cost incurred by the Owner Participant.

- 17.6.3 With respect to any policy or policies of insurance obtained and maintained by the Owner pursuant to Section 1.3 of Schedule 9 (Insurance Policies and Bonds), the Owner is responsible for the payment of deductibles applicable to such policy or policies, and such payment will not be treated as an Actual Cost incurred by the Owner Participant.

### **17.7 Payments from insurers as Actual Cost**

All payments received by any AD Participant from insurers on account of claims in respect of additional Actual Cost:

- 17.7.1 incurred or to be incurred by any AD Participant; and
- 17.7.2 arising from an insured event under an insurance policy taken out by the Owner under Sections 1.1 and 1.2 of Schedule 9 (Insurance Policies and Bonds) or a NOP under Section 17.2,

shall be credited to the Actual Cost.

### **17.8 Participants responsibilities**

At all times the AD Participants (to the extent applicable) are responsible for complying with the terms and conditions of the policies taken out under this ADA and, without derogating from any other obligations under this ADA, must ensure that their employees, Subcontractors and Subcontractors' employees are made aware of, and comply with, these terms and conditions.

### **17.9 Obligation to notify, assess and cooperate**

- 17.9.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this ADA, the Participants shall: (i) cooperate with the insurer and its consultant, including by providing them with such information and documentation as they reasonably require; and (ii) allow the insurer and its consultant to attend meetings between the Participants (or, as applicable, and if reasonably required by the insurer, between Participants and parties engaged by or through Participants).
- 17.9.2 Each Participant must immediately notify in writing the other Participants of any relevant changes to the terms and conditions of the insurance policies it is required to maintain under this ADA including changes to the available coverage or limits, but only to the extent that the relevant Participant's insurance policy does not comply with the insurance requirements specified in this ADA.
- 17.9.3 The NOPs must provide the Owner Participant with all reasonable assistance and all information reasonably required by the Owner Participant within the time frames and in the format specified by the Owner Participant to enable the Owner Participant to obtain, effect and maintain policies referred to in Section 1 of Schedule 9 (Insurance Policies and Bonds).
- 17.9.4 The NOPs and the Owner shall provide to each other at least five (5) Business Days prior to the expiry date of any policy of insurance required to be obtained by a NOP or the Owner (as the case may be) pursuant to Schedule 9

(Insurance Policies and Bonds) and evidence of the renewal of each such policy satisfactory to the NOPs and the Owner, each acting reasonably.

**17.10 Owner to be informed of Notices**

Each NOP must ensure that every insurance policy taken out by it under this ADA includes a provision that requires the NOP, whenever the insurer gives to or serves upon the NOP or Subcontractor a notice of any kind of cancellation or any other notice under or in relation to the policy of insurance, as soon as possible, to inform the Owner in writing that the notice has been given to or served upon that NOP or Subcontractor.

**17.11 Notice is notice by all insureds**

Each NOP and the Owner must ensure that every insurance policy taken out by it under this ADA contains a provision that provides that a notice of the occurrence of an event out of which the particular insured giving the notice alleges it has suffered, or could suffer, loss or damage or incur a liability must be accepted by the insurer as a notice of the occurrence given by all the insureds.

**17.12 Non-compliance**

If any NOP does not follow a written request from another AD Participant or the Owner's Representative to fulfill and comply with its obligations under Section 17, the AD Participant making the request, or the Owner (to the extent the Owner's Representative made the request) may take action it considers appropriate to ensure that the non-compliant NOP complies.

**17.13 Surety bonds**

To the extent required by the ALT, any NOP undertaking Early Works will take out and maintain in full compliance with the Construction Act the Bonds set out in Schedule 9 (Insurance Policies and Bonds). To the extent required, the Actual Cost and applicable Overhead in respect of such Bonds will be payable by the Owner in accordance with this ADA, provided that no Profit shall be payable in respect thereof notwithstanding the provisions of Schedule 5 (Fee).

[REDACTED]

**18 INDEMNITIES**

**18.1 Non-compliance with insurance requirements by a NOP**

Each NOP (each an "**Indemnifying NOP**") indemnifies and must keep indemnified:

- 18.1.1 the Owner;
- 18.1.2 the Owner Participant; and
- 18.1.3 each other NOP,

(each an "**Indemnified Person**"), and each Indemnified Person's directors, officers, employees and agents against losses, damages or claims suffered by any Indemnified Person or its directors, officers, employees and agents as a consequence of non-compliance by the Indemnifying NOP with:

- 18.1.4 the terms and conditions of Section 17 (including any failure of the Indemnifying NOP to take out and maintain any of the insurances required to be taken out and maintained by the Indemnifying NOP under this ADA); or
- 18.1.5 the terms and conditions of the insurance policies required to be taken out and maintained by the Owner or a NOP under this ADA (including any act or omission of the Indemnifying NOP which causes an insurance policy required to be taken out and maintained by the Owner or a NOP under this ADA to not respond to any claim in respect of this ADA).

## 18.2 **Non-compliance with insurance requirements by the Owner**

The Owner indemnifies and must keep indemnified each NOP (each an “**Indemnified NOP**”) and the directors, officers, employees and agents of the Indemnified NOP against losses, damages or claims suffered by the Indemnified NOP and the directors, officers, employees and agents of the Indemnified NOP as a consequence of non-compliance by the Owner and/or the Owner Participant with:

- 18.2.1 the terms and conditions of Section 17 (including any failure of the Owner to take out and maintain any of the insurances required to be taken out and maintained by the Owner under this ADA); or
- 18.2.2 the terms and conditions of the insurance policies required to be taken out and maintained by the Owner or a NOP under this ADA (including any act or omission of the Owner and/or the Owner Participant which causes an insurance policy required to be taken out and maintained by the Owner or a NOP under this ADA to not respond to any claim in respect of this ADA).

## 18.3 **Wilful Default by a NOP**

Each Indemnifying NOP indemnifies and must keep indemnified each Indemnified Person and its directors, officers, employees and agents against losses, damages or claims suffered by any Indemnified Person or its respective directors, officers, employees and agents as a consequence of or arising from any Wilful Default by the Indemnifying NOP.

## 18.4 **Wilful Default by the Owner Participant**

The Owner indemnifies and must keep indemnified each Indemnified NOP and its directors, officers, employees and agents against losses, damages or claims suffered by the Indemnified NOP or its directors, officers, employees and agents as a consequence of or arising from any Wilful Default by the Owner Participant.

## 18.5 **Proportionate liability under the indemnities**

- 18.5.1 The liability of the Indemnifying NOP under the indemnities contained in Sections 18.1 and 18.3 is reduced proportionately to the extent that an act or omission of the Owner and/or the Owner Participant, its directors, officers, employees, agents, contractors or subcontractors (of any tier) (other than the Indemnifying NOP and its subcontractors (of any tier) and agents) has contributed to the loss, damage or claim.
- 18.5.2 The liability of the Owner under the indemnities contained in Sections 18.2 and 18.4 is reduced proportionately to the extent that an act or omission of a NOP, its directors, officers, employees, agents, contractors or subcontractors (of any tier) has contributed to the loss, damage or claim.



## 18.6 Exclusion of Consequential Loss

Subject to Section 18.7, no Party is liable to any other Party for any Consequential Loss sustained by that other Party, whether caused by that Party's breach of this ADA, negligence or otherwise.

## 18.7 Exception to the Exclusion of Consequential Loss

A Party may be liable to another Party for Consequential Loss to the extent that such Consequential Loss is covered and is recovered under a policy of insurance which is required to be taken out under this ADA or which the Owner has taken out pursuant to Section 1.3 of Schedule 9 (Insurance Policies and Bonds).

## 18.8 Cap on Liability

18.8.1 Subject to Section 18.8.2, the total aggregate liability of any NOP to the Owner arising out of or in connection with this ADA shall not exceed whichever is the greater of:

18.8.1.1 the aggregate Fee paid or payable to that Party under this ADA at the date the relevant liability arose; or

18.8.1.2 **[\$[REDACTED]**,

and for the purpose of this Section 18.8.1, any liability of a NOP to the Owner Participant shall be treated as a liability to the Owner.

18.8.2 Nothing in Section 18.8.1 limits any liability of a NOP to the Owner:

18.8.2.1 in respect of any amount which is recoverable under a policy of insurance required to be taken out under Section 17.2 (or would be recoverable but for the relevant NOP's own default);

18.8.2.2 for Wilful Default, other than in respect of paragraphs (c) and (d) in the definition of Wilful Default set forth in Section 1.1;

18.8.2.3 in respect of the indemnity set forth in Section 19.4;

18.8.2.4 for breach of any Applicable Law; or

18.8.2.5 under or in connection with this ADA that cannot be excluded by any Statutory Requirement,

and the amount of any such liability is not to be taken into account in determining any cap on liability under Section 18.8.1.

## 18.9 Conduct of Indemnity Claims

This Section 18.9 shall apply to the conduct of claims, made by a third person against a Party having, or claiming to have, the benefit of an indemnity pursuant to this ADA. The Party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the Party giving the indemnity is referred to as the "**Indemnifier**".

18.9.1 If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may

become entitled to, indemnification under this Section 18, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.

18.9.2 Subject to Sections 18.9.3, 18.9.4 and 18.9.5, on the giving of any such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.

18.9.3 With respect to any claim conducted by the Indemnifier:

18.9.3.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;

18.9.3.2 the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

18.9.3.3 the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;

18.9.3.4 the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

18.9.3.5 the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 18.9 relates.

18.9.4 The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this ADA if:

18.9.4.1 the Indemnifier is not entitled to take conduct of the claim in accordance with Section 18.9.2;

18.9.4.2 the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 18.9.1 or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or

18.9.4.3 the Indemnifier fails to comply in any material respect with Section 18.9.3.

18.9.5 The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 18.9.2 applies. For greater certainty, the NOPs acknowledge and agree that where the Owner is the Beneficiary, the Owner may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 18.9.5, then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.

18.9.6 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the "**Recovery Amount**") which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

18.9.6.1 an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and

18.9.6.2 the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

18.9.7 Any person taking any of the steps contemplated by this Section 18.9 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this ADA.

## 19 INTELLECTUAL PROPERTY

### 19.1 IP vested in NOP

The Intellectual Property which the NOPs have supplied to the Owner in accordance with this ADA and which any NOP has created and/or developed for the purposes of performing its obligations under this ADA will remain vested in the relevant NOP.

### 19.2 Grant of IP

Subject to Section 19.4, each NOP hereby grants to:

- 19.2.1 the Owner, an irrevocable, royalty free, non-exclusive licence to copy, use, adapt and reproduce the Intellectual Property for any purpose whatsoever in connection with the Project, this ADA, the Project Alliance Agreement, the Services, the Early Works, the Works (including the performance of any works and/or services by others which were capable of forming part of the Early Works, the Works and/or the Services); and
- 19.2.2 each other NOP and the Owner Participant, an irrevocable, royalty free, non-exclusive licence to copy, use, adapt and reproduce the Intellectual Property for any purpose whatsoever in connection with the Project, the Services, the Early Works and the Works.

### **19.3 Right to grant sub-licences**

The licences granted at Sections 19.2.1 and 19.2.2 shall carry with them the right for the relevant Licensee to grant sub-licences and shall be transferable to third parties.

### **19.4 IP indemnity**

Unless and to the extent caused by any breach by the Owner of this ADA, the NOPs indemnify the Owner against all loss, damage, costs and expenses for which the Owner are or become liable as a result of any infringement or alleged infringement by any NOP of any third party's Intellectual Property rights, provided the Owner:

- 19.4.1 promptly gives the NOPs notice of any such claim being received or any proceedings in relation to such a claim being threatened or served on the Owner; and
- 19.4.2 permits the relevant NOP (at that NOP's expense and on the basis that the NOPs indemnifies the Owner for all legal costs and expenses the Owner may properly incur in respect of such proceedings) to conduct the defence of any such claim and all negotiations for its settlement.

### **19.5 Liability of NOPs for certain uses**

The NOPs are not liable for any use of the Intellectual Property for any purpose other than that for which it was originally prepared or supplied by the relevant NOP. Notwithstanding the granting of any licence pursuant to this Section 19, where the Owner has made any Modification to the Intellectual Property licenced by a NOP hereunder other than a Modification made by or on behalf of the relevant NOP, then any warranty provided by such NOP under this ADA shall not apply in respect of such Modification.

### **19.6 Moral rights**

Each NOP waives in favour of the Owner, the Owner Participant and each other NOP any and all moral rights in any of its designs and drawings.

### **19.7 Survival of Section 19**

Notwithstanding any other provision of this ADA, this Section 19 shall survive the termination or expiry of this ADA.

## **20 TERMINATION**

### **20.1 No fault termination**

- 20.1.1 The Owner may, at any time, in its absolute discretion and with immediate effect, terminate this ADA for any reason, including termination for convenience, by giving the NOPs a written notice of termination.
- 20.1.2 Subject to any rights the Owner has arising out of or in connection with this ADA (including any right to set off payments), if the Owner terminates this ADA under Section 20.1.1 the NOPs will be entitled to be paid the Actual Cost and Fee for Services and any Early Works performed in accordance with this ADA prior to the date of termination in respect of which an Estimate has been approved by the Owner's Representative pursuant to Section 11.4.1, together with the Actual Cost of any work directed by the Owner's Representative to be undertaken by the NOPs to ensure that the Site is left in a safe and secure condition, and, save as set out above, the NOPs shall not be entitled to any payment of compensation, loss of opportunity, loss of profit or similar losses under or in connection with this ADA arising out of any such termination, including in respect of any work or services performed in connection with an Estimate which has not been approved in accordance with Section 11.5.1 and any demobilization costs.
- 20.1.3 Other than as described in this Section 20.1, the Owner is not required to make any other payment to the NOPs if it terminates this ADA under this Section 20.1 and is not liable for any loss or damage suffered or incurred by the NOPs arising from any decision by the Owner to terminate this ADA under this Section 20.1.
- 20.1.4 Upon payment of any amount payable pursuant to Section 20.1.2, the Owner and each NOP shall enter into a release agreement under which the Owner and each NOP:
  - 20.1.4.1 agree that all payments required to be made by the Owner or by each NOP (as the case may be) in respect of the ADA have been made in full; and
  - 20.1.4.2 release each other from any claims arising out of or in connection with this ADA other than claims arising out of Sections 16.5, 19, 22.9 and 22.10.

**20.2 Default**

- 20.2.1 A "Default" occurs where any NOP:
  - 20.2.1.1 commits a material breach of this ADA; or
  - 20.2.1.2 is the subject of an Insolvency Event.
- 20.2.2 A Default by one NOP is deemed for the purpose of Sections 20.2.1 and 20.3 only to be a Default of the NOP committing or subject to that Default.

**20.3 Expulsion of a NOP for Default**

- 20.3.1 If any NOP commits or is deemed to have committed a Default, which Default remains unremedied 10 Business Days after receipt of notice to the NOPs from the Owner's Representative requiring the Default to be remedied to the Owner's reasonable satisfaction, the Owner may expel that NOP from the performance of any further works or services whatsoever under this ADA by

serving a notice under this Section 20.3 which notice specifies the Default (“**Expulsion Notice**”).

20.3.2 An Expulsion Notice may be served against one or more defaulting NOPs at the same time, if all such NOPs have committed the same or a different Default.

#### **20.4 Consequences of an Expulsion Notice under this ADA**

Where the Owner’s Representative has served an Expulsion Notice on a defaulting NOP under Section 20.3, that NOP:

20.4.1 must immediately cease performance of any Services or Early Works under this ADA and comply with this Section 20;

20.4.2 remains entitled to payment in accordance with this ADA for the Services performed up to the date of that Expulsion Notice;

20.4.3 is not entitled to any payment of Actual Cost or Fee under this ADA arising after the date of that Expulsion Notice;

20.4.4 is not entitled to payment of any Performance Reward Amount and is liable for payment to the Owner for any Performance Liability Amount otherwise payable by the defaulting NOP;

20.4.5 is liable to the Owner for any additional costs incurred by the Owner under this ADA (or any amendment thereto to add any replacement contractor or Replacement NOP) or under a similar agreement with other contractors (in the event of termination of this ADA) arising from the completion by other contractors or others of any unfulfilled Services or Early Works or for ensuring that the Site is maintained in a safe and secure condition;

20.4.6 must promptly return to the Owner’s Representative all copies of information and documentation provided by the Owner (including by ALT, AMT or APT) or the other NOPs for the purposes of this ADA;

20.4.7 shall permit the Owner, the other NOPs and any other person, at no cost, to use any of the work, documentation or information developed by that NOP under this ADA for the purposes permitted by this ADA (and for the avoidance of doubt that NOP shall have no liability to the Owner, the other NOPs or any other person for any use of such work, documentation or information by the Owner, the other NOPs or any other person for any purpose other than those permitted by this ADA);

20.4.8 shall provide any work, documentation or information referred to in Section 20.4.7 to the Owner, the other NOPs or other person within 10 Business Days of the Owner’s Representative’s request for them to do so; and

20.4.9 warrants, notwithstanding its expulsion from further participation under this ADA, that it will not do, or omit to do, anything to prevent the Owner, the other NOPs or any other person from carrying out any Early Works or the Project.

#### **20.5 Appointment of Replacement NOP following an Expulsion Notice**

- 20.5.1 Following an Expulsion Notice the ALT may seek the Owner's approval to the appointment of one or more additional NOPs to replace the defaulting NOP ("**Replacement NOP**").
- 20.5.2 If the Owner, in its absolute discretion, approves of a proposed Replacement NOP pursuant to Section 20.5.1, the Owner's Representative will issue a Notice to the ALT approving the Replacement NOP. One reason for not approving or delaying the approval of any Replacement NOP is a requirement for the Owner to comply with procurement law or any regulatory requirement, and any such approval may not be immediate or be subject to a competitive procurement process. The Owner does not warrant it will be able to procure a Replacement NOP.
- 20.5.3 Any costs reasonably and actually incurred by the Owner in connection with this Section 20.5 shall be to the account of the NOPs and recoverable by the Owner under this ADA.
- 20.5.4 A failure or delay in appointing a Replacement NOP for any reason (including any act or omission of the Owner) does not relieve any NOP from its liabilities or obligations under this ADA.
- 20.5.5 The ALT may withdraw a request for approval of a proposed Replacement NOP at any time by Notice to the Owner's Representative.

Unless the Owner and the non-defaulting NOPs agree otherwise, any Replacement NOP must be appointed on the same terms and conditions (and as a new Party) to this ADA.

## **20.6 Default termination of this ADA**

If at any time the Owner is entitled to and serves an Expulsion Notice against:

- 20.6.1 all NOPs;
- 20.6.2 all remaining NOPs; or
- 20.6.3 a NOP who is the sole remaining NOP,

under this ADA such will take effect as an Expulsion Notice under Section 20.4 against all such NOPs, save that this ADA is deemed to be terminated on the date of that Expulsion Notice (without prejudice to the obligations to be performed by such NOPs under Section 20.4 after such termination) and the reference to "other NOPs" in Section 20.4 is disregarded.

## **20.7 Rights preserved**

The expiry or termination of this ADA will not affect any rights of a Party against the other Party in respect of any act, omission, matter, or thing occurring or under this ADA prior to that expiry or termination.

## **20.8 Survival of Section 20**

Notwithstanding any other provision of this ADA, this Section 20 shall survive the termination or expiry of this ADA.

## **21 NOTICES**

### **21.1 How and where Notices may be sent**

A notice or other communication under this ADA (“**Notice**”) must be in writing and served by sending the same by registered mail, by facsimile or by hand (in each case with a copy by electronic submission) to a Party at the address set out in Schedule 1 (Team Contact Details) or as otherwise specified by a Party by Notice.

### **21.2 Notices sent by company**

A Notice sent by a company must be signed by a duly authorized officer of the sender.

### **21.3 When Notices are taken to have been given and received**

21.3.1 A Notice given by registered mail shall be deemed received on the third Business Day following the date of mailing.

21.3.2 A Notice given by hand delivery shall be deemed to have been received on the day it was delivered.

21.3.3 A Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

21.3.4 If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile.

21.3.5 If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 5:00 p.m. (recipient’s local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.

21.3.6 A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

### **21.4 Notice to the Owner and Owner Participant**

Unless notified otherwise by the Owner’s Representative, a Notice to the Owner must be in writing and delivered by hand or sent by pre-paid post to the Owner at its registered address marked for the attention of the General and copied to the Owner’s Representative.

## **22 GENERAL**

### **22.1 Governing law and jurisdiction**

22.1.1 This ADA and each of the documents contemplated by or delivered under or in connection with this ADA, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.



- 22.1.2 Each Party irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- 22.1.3 Each Party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 22.1.4 Nothing in this ADA affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

## **22.2 Invalidity and enforceability**

If any term or part of this ADA is or becomes for any reason invalid or unenforceable at law, then in that event, that term or part of this ADA will be and be hereby deemed to be severed from this ADA without thereby affecting the remainder of this ADA and the remainder of this ADA will continue to be valid and enforceable in all things.

## **22.3 Waiver**

- 22.3.1 No Party to this ADA may rely on the words or conduct of any other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.
- 22.3.2 Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.
- 22.3.3 In this Section 22.3:
- 22.3.3.1 conduct includes delay in the exercise of a right;
  - 22.3.3.2 right means any right arising under or in connection with this ADA and includes the right to rely on this Section; and
  - 22.3.3.3 waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## **22.4 Amendments**

Amendment of this ADA must be in writing and signed by the Parties.

## **22.5 Entire agreement**

This ADA states all the express terms of the agreement between the Parties in respect of its subject matter. This ADA supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

## **22.6 Counterparts**

This ADA may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original

or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of this ADA which was so faxed.

## **22.7 Assignment**

22.7.1 A NOP shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this ADA without the prior written consent of the Owner, which consent may be withheld in the sole and absolute discretion of the Owner, provided however that no sale, assignment, transfer, charge, mortgage, encumbrance disposition or other alienation shall be permitted to a person where that person or its Affiliate is a Restricted Person or a person whose standing or activities may compromise (i) the Owner's reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto, the Province of Ontario or the Project.

22.7.2 The Owner may assign, transfer, dispose of or otherwise alienate any interest in this ADA or any agreement in connection with this ADA to which the NOPs and the Owner are parties:

22.7.2.1 to the Province;

22.7.2.2 as may be required to comply with Applicable Law;

22.7.2.3 to any minister of the Province;

22.7.2.4 to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the Owner under this ADA provided that such person confirms in writing to the NOPs that it will perform all of the Owner's obligations hereunder in respect of the period from and after the assignment; and

22.7.2.5 in circumstances other than those described in Sections 22.7.2.1 to 22.7.2.4 with the prior written consent of each of the NOPs (such consent not to be unreasonably withheld or delayed); provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to the NOPs that it will perform all the obligations of the Owner hereunder and under any agreement in connection with this ADA to which the NOPs and the Owner are parties in respect of the period from and after the assignment.

## **22.8 Change in Control**

22.8.1 No Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity shall be permitted to have at any time or acquire Direct or Indirect Power or Control over any NOP Group or any guarantor of a NOP in relation to the decisions, management, actions or policies of the NOP or the guarantor or in relation to the operation, management and ownership of the Project.

22.8.2 No Change in Ownership of a NOP, any guarantor of a NOP, or of any Control Party, shall be permitted:

- 22.8.2.1 where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities may compromise (i) Owner's reputation or integrity, or (ii) the nature of the public transit system in any of the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto, the Province of Ontario or the Project; or
  - 22.8.2.2 if such Change in Ownership would have a material adverse effect on the performance of the Works or the Governmental Activities.
- 22.8.3 In the event that a person having Direct or Indirect Power or Control over any member of the NOP Group in relation to the decisions, management, actions or policies of the NOP or in relation to the operation, management and ownership of the Project becomes a Restricted Person, the Owner may:
- 22.8.3.1 in the case of an individual who becomes a Restricted Person, require that such Restricted Person be divested of his or her Direct or Indirect Power or Control; or
  - 22.8.3.2 in any other circumstance, require a Change in Ownership so that the Restricted Person shall be divested of its Direct or Indirect Power or Control,
- in each case, on such terms as are satisfactory to Owner, in its discretion.
- 22.8.4 Each NOP shall provide notice to the Owner's Representative of any Change in Ownership of the NOP or of any Control Party, as the case may be, that is not a Change in Control within five (5) Business Days after such Change in Ownership, and such Notice shall include a statement identifying all persons with an ownership interest in the NOP or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
- 22.8.5 Subject to Sections 22.8.1, 22.8.2, 22.8.3 and 22.8.4, no Change in Control of a NOP, or of any Control Party, shall be permitted without the prior written consent of the Owner and the other NOPs.
- 22.8.6 Each NOP shall provide Notice to the Owner's Representative of any proposed Change in Control of the NOP or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control, and such Notice shall include:
- 22.8.6.1 a statement identifying all persons with an ownership interest in the NOP or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests in each case prior to and following any such proposed Change in Control; and
  - 22.8.6.2 as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over the NOP, the guarantor or the relevant Control Party pursuant to such Change in Control.

Following the delivery to the Owner's Representative of the Notice referred to in this Section 22.8.6, the NOP shall provide the Owner's Representative with such other information pertaining to the

proposed or actual Change in Control as the Owner's Representative may reasonably request and shall attend any meetings requested by the Owner's Representative including arranging for attendance at those meetings by the Third Party acquiring or exercising control over the relevant NOP.

- 22.8.7 Upon request by a NOP and delivery of the information required by the Owner's Representative, the Owner shall advise the NOP whether the person described in such particulars is a Restricted Person or a person whose standing or activities may compromise (i) the Owner's reputation or integrity, or (ii) the nature of the public transit system in the City of Toronto or the Province of Ontario so as to affect public confidence in the public transit system in the City of Toronto, the Province of Ontario or the Project.
- 22.8.8 Notwithstanding the definition of "Control Parties" set out in the Project Alliance Agreement, this Section 22.8.8 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.
- 22.8.9 Section 22.8.4 shall not apply to a Change in Ownership of a Control Party that arises from a change in the shareholdings of such Control Party or an Affiliate of such Control Party (the "**Relevant Entity**") owned by an employee of such Relevant Entity, unless such changes individually or in the aggregate determined since the date of this ADA, would result in a Change of Control of a NOP, in which case Section 22.8.6 shall apply.

## **22.9 Confidentiality**

The Parties agree that this ADA, and any information relating to or arising from the ADA, is Confidential Information, and that they will not disclose the ADA, or any information relating to or arising from the ADA, to any person, unless that disclosure or that information:

- 22.9.1 is to a professional advisor engaged by any Party in connection with or arising out of this ADA or the PAA and for the purpose of that advisor providing advice to that Party;
- 22.9.2 is at the material time in the public domain;
- 22.9.3 is required by any Statutory Requirement to be communicated to a person who is authorised by any Statutory Requirement to receive it;
- 22.9.4 is necessarily made to a Court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings provided that, in the case of any arbitration proceedings, the Party concerned first obtains from each other party to those proceedings an undertaking, enforceable by any Party, that each party must similarly not divulge or communicate, without the Owner's written consent, any information referred to in this Section;
- 22.9.5 is required to be disclosed to any Governmental Authority whether in connection with the granting of any licence or otherwise;
- 22.9.6 is to a servant, employee, agent or contractor of the Parties, when that disclosure is reasonably necessary for the conduct of this ADA;
- 22.9.7 is to an Affiliate of the Parties;

- 22.9.8 was consented to in writing by each of the other Parties;
- 22.9.9 is required to be disclosed to the Toronto Stock Exchange or any other recognized stock exchange; or
- 22.9.10 is required to be disclosed by the Owner to any Governmental Authority.

## **22.10 Freedom of Information and Protection of Privacy Act**

- 22.10.1 The Parties acknowledge and agree that,
  - 22.10.1.1 FIPPA applies to the Owner, and that the Owner is required to fully comply with FIPPA; and
  - 22.10.1.2 MFIPPA may apply to the owners of any Early Works to be owned by third parties, and that such owners are required to fully comply with MFIPPA.
- 22.10.2 The Owner shall, within the time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise a NOP of any request for Confidential Information that relates to a NOP (or any NOP Party) or of the Owner's intention to voluntarily release any information or documents which contain Confidential Information that relates to a NOP (or any NOP Party).
- 22.10.3 Each NOP must and must ensure that its Subcontractors must:
  - 22.10.3.1 provide all necessary assistance and cooperation as reasonably requested by the Owner's Representative to enable it to comply with its obligations under the FIPPA and MFIPPA;
  - 22.10.3.2 transfer to the Owner's Representative all requests for information relating to this ADA that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
  - 22.10.3.3 provide the Owner's Representative with a copy of all information belonging to the Owner requested in the request for information which is in its possession or control in the form that the Owner requires within five (5) Business Days (or such other period as the Owner's Representative may reasonably specify) of the Owner's Representative requesting such information; and
  - 22.10.3.4 not respond directly to a request for information unless authorized in writing to do so by the Owner's Representative.

## **22.11 Publicity or media statements**

- 22.11.1 The NOPs acknowledge and accept that they must not issue any information, publication, document or article relating to this ADA, the Project, the Services or the Early Works without the prior written approval of the Owner.
- 22.11.2 The NOPs must immediately refer to the Owner's Representative any media enquiries relating to this ADA, the Project, the Services or the Early Works.

## **22.12 Relationship of the Parties**

- 22.12.1 Nothing in this ADA gives a Party authority to bind any other Party in any way.
- 22.12.2 The NOPs are independent contractors of the Owner (and all representatives of the Owner within or comprising the Owner, the Owner's Representative, the ALT, AMT and APT).
- 22.12.3 The employees, agents and subcontractors of the NOPs will not be deemed to be employees, agents or subcontractors of the Owner and each Party must pay all costs associated with its employees.
- 22.12.4 This ADA is not intended to create, nor will it be construed as creating, any partnership, joint venture, fiduciary obligation, employer/employee relationship, master/servant relationship, or principal/agent relationship (except as provided in this ADA) with regard to, or as between, the Parties.

### **22.13 Corporate power and authority**

Each Party represents and warrants to the others that it has full power to enter into and perform its obligations under this ADA and that when executed it will constitute legal, valid and binding obligations under its terms.

### **22.14 Financial difficulties**

A Party must immediately notify the other Parties in writing if it forms the opinion that it will be unable to, or be unlikely to be able to, satisfy any of its financial obligations in relation to this ADA from the financial resources available, or likely to be available to it, at the time the financial obligation is due.

### **22.15 The Owner's statutory functions**

Nothing in this ADA shall in any way fetter the right, authority and discretion of the Owner or any Government Entity in fulfilling its statutory or other functions under Applicable Law, and each NOP understands and agrees that nothing in this ADA shall preclude IO's board of directors, or Metrolinx's board of directors (or any respective designate appointed by them) from performing, discharging or exercising its duties, responsibilities, and powers under Applicable Law.

### **22.16 Costs**

Each Party must pay its own costs and disbursements in connection with the negotiations, preparation and execution of this ADA, and these costs are not recoverable as Actual Costs.

### **22.17 Security vetting**

- 22.17.1 AD Participant Personnel shall comply with the security arrangements as may be in force from time to time for the conduct of personnel at the Site and/or the Owner's property and in the use of Owner IT networks, including:
  - 22.17.1.1 Each AD Participant Personnel is required to complete and deliver a criminal records search form to the AD Participant;
  - 22.17.1.2 Each AD Participant Personnel is required to be questioned concerning Relevant Convictions; and

- 22.17.1.3 Each AD Participant shall prevent AD Participant Personnel who are unable to obtain the required security clearances from accessing Owner premises and Owner IT networks.
- 22.17.2 To the extent permitted by Applicable Law, each NOP shall, and shall cause each NOP Party to, ensure that no person who discloses any Relevant Conviction, or who is found to have any Relevant Conviction following the completion of a criminal records search, in either case of which the NOP or a NOP Party is aware or ought to be aware, is allowed access to the Site to perform any Works, without the prior written consent of the Owner, in its sole and absolute discretion.
- 22.17.3 To the extent permitted by Applicable Law, each NOP shall ensure that the Alliance Director is kept immediately notified and kept advised at all times of any person employed or engaged by the NOP or any NOP Party in the provision of any of the Works who, subsequent to the commencement of such employment or engagement, (i) has been arrested or detained; (ii) receives a Relevant Conviction; or (iii) is charged with an offence that could lead to a Relevant Conviction (of which the NOP or a NOP Party becomes aware or whose previous Relevant Convictions become known to the NOP or a NOP Party). Each NOP shall use commercially reasonable efforts to obtain, or to cause all NOP Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to the Owner's Representative as contemplated in this Section 22.17.

## **22.18 Enurement**

This ADA and any other agreement entered into in connection with the Project to which the Owner and each of the AD Participants are parties shall enure to the benefit of, and be binding on, the Owner, and each of the AD Participants and their respective successors and permitted transferees and assigns.

## **22.19 Remedies Cumulative**

Except as otherwise set forth in this ADA, the rights, powers and remedies of each Party set forth in this ADA are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this ADA.

## **23 INTRA NOP INDEMNITIES**

### **23.1 Sharing Liabilities between the NOPs**

Save for:

- 23.1.1 liability for death and personal injury arising from negligence;
- 23.1.2 liability arising as a result of expulsion under Sections 22.3 and 22.4; and
- 23.1.3 the circumstances provided in Section 23.5,

the NOPs acknowledge and agree in respect of the Project that:

- 23.1.4 the liability of a NOP to the Owner in respect of any and all liability, costs, losses, claims, damages or expenses (which shall include all interest, legal costs and disbursements) arising out of or in connection with any

circumstances in respect of this ADA, whether in contract, in tort, in negligence, for breach of statutory duty, or otherwise;

- 23.1.5 the liability of a NOP to any third party in respect of any and all liability, costs, losses, claims, damages or expenses (which shall include all interest, legal costs and disbursements) arising out of or in connection with any circumstances in respect of this ADA, whether in contract, in tort, in negligence, for breach of statutory duty, or otherwise; and
- 23.1.6 the liability of a NOP for any costs reasonably and properly incurred for the purposes of the Project (including any such costs incurred by an Affiliate) but which cannot be claimed from the Owner provided such costs do not constitute cost elements allocated to Overhead and/or Profit as identified in the Cost Element Allocation Tables in Schedule 4 (Actual Cost),

(each a “**Liability**”) irrespective of the extent of each NOP’s actual contribution to or responsibility for the cause of the Liability, shall be shared by the NOPs with each NOP taking a proportion of the Liability and/or the entitlement as set forth below (each the “**NOP’s Proportion**”):

NOP 1: [REDACTED]%

NOP 2: [REDACTED]%

NOP 3: [REDACTED]%

## **23.2 Indemnity to Pursued NOP**

In the event that one or more of the NOPs (each a “**Pursued NOP**”) incurs or will incur Liability (whether or not caused by another NOP or the other NOPs), the other NOP(s) (the “**Non-Pursued NOP(s)**”) shall each indemnify the Pursued NOP(s) to the extent required such that each NOP’s share of the total Liability when it so arises represents the NOP’s Proportion but under no circumstances shall the Non-Pursued NOP(s) be liable to pay more than that NOP’s Proportion in total.

## **23.3 Mitigation of any Liability**

Each NOP shall be under a duty to take such measures as are reasonable to mitigate any actual or potential Liability.

## **23.4 Notice of claim**

The Non-Pursued NOP(s) shall not be liable to a Pursued NOP for any Liability unless notice in writing summarising the nature of the relevant claim (in so far as it is known to the Pursued NOP) and, as far as is reasonably practicable, the amount claimed, has been given by or on behalf of the Pursued NOP to the Non-Pursued NOP(s) within a time period of six (6) calendar months after it knew or should, acting reasonably, have known of the facts constituting the basis of the claim.

## **23.5 Breach of indemnity obligations**

To the extent a NOP is in breach of its obligation to indemnify under Section 23.2, it shall be liable on an indemnity basis to pay the reasonable costs of any other NOP and its own costs, incurred in connection with the enforcement of the indemnity in Section 23.2.



### **23.6 Apportionment between ADA and PAA**

Where a Liability arises out of or in connection with any circumstances to which the provisions of this Section 23 apply and the provisions of the equivalent Section in the PAA would apply, that Liability shall be apportioned under the PAA.

## **24 BUILDING INFORMATION MODELLING**

### **24.1 BIM Protocol**

The Owner and the AD Participants will comply with the requirements provided in the latest available version of the following Metrolinx standards for BIM:

24.1.1 BIM Implementation Plan CPG-DGN-PLN-083;

24.1.2 CADD/BIM Standards Manual CPG-DGN-PLN-084; and

24.1.3 BIM Execution Plan Template CPG-DGN-PLN-085.

### **24.2 Amendments to BIM Protocol**

Any additional procedures or requirements which the AD Participants are to adopt in support of or as part of the BIM Protocol and/or associated IT systems shall be set out in a Request for Estimate. The Parties shall have the benefit of any rights granted to them in the BIM Protocol and of any limitations or exclusions of liability contained within it.

## **25 PARENT COMPANY GUARANTEE**

### **25.1 Form of guarantee**

25.1.1 Each NOP must ensure that a parent company guarantee in the form set out in Schedule 16 (Parent Company Guarantee) is provided to the Owner on or before the ADA Commencement Date from:

25.1.1.1 the relevant NOP's ultimate holding company; or

25.1.1.2 the companies identified in Schedule 15 (Guarantors) as the guarantor in respect of that NOP.

25.1.2 Each NOP must ensure that, from the ADA Commencement Date until termination of this ADA, the parent company guarantee in respect of that NOP is in place, in full force and effect and is a valid and binding guarantee of such guarantor in favour of the Owner, and is maintained in the form of guarantee set out in Schedule 16 (Parent Company Guarantee).

25.1.3 All costs of establishing and maintaining a parent company guarantee (including any costs incurred if the Owner seeks recourse to the parent guarantee) will be the responsibility of and must be paid by the relevant NOP and will not be Actual Costs.

### **25.2 Failure to provide guarantees by the ADA Commencement Date**

If any NOP fails to provide a guarantee in accordance with and by the date required by Section 25.1, the Owner is entitled to withhold payment of any amount due to that NOP under this ADA until such time as a guarantee in accordance with Section 25.1 is provided

by that NOP and, if such guarantee is not provided within thirty (30) days of the ADA Commencement Date, it will be deemed to be a Default by that NOP for the purpose of Section 20.2.

**25.3 Recourse by the Owner**

The Owner may have recourse to the parent company guarantees in the circumstances contemplated by the parent company guarantees.

**25.4 Maintenance of guarantees**

Each NOP must ensure that each parent company guarantee is maintained in the terms specified in Schedule 16 (Parent Company Guarantee) and is otherwise kept in full force and effect for so long as the relevant NOP may have a liability (contingent or otherwise) under or in connection with this ADA.

**25.5 Demand is without prejudice to other rights**

Any agreement between the provider of a parent company guarantee and the Owner with respect to any demands made and amounts paid by the provider to the Owner under that parent company guarantee is without prejudice to the Owner's right to make continuing claims against the relevant NOP in relation to matters for which that parent company guarantee is provided.

**25.6 Costs of procuring guarantees are within the Fee**

The costs incurred by each NOP in establishing and maintaining a parent company guarantee are to be treated as included in its Overhead and are not recoverable as Actual Cost.

**26 COPYRIGHT NOTICE**

The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in this ADA.

*[SIGNATURE PAGES IMMEDIATELY FOLLOW]*

**IN WITNESS WHEREOF** the Parties have executed this ADA as of the date first above written.

**ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per: \_\_\_\_\_

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**METROLINX**

Per: \_\_\_\_\_

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

*(Signature Page to Alliance Development Agreement)*

**KIEWIT-ALBERICI UNION GENERAL PARTNERSHIP**

By its partners:

**[REDACTED]**

Per: \_\_\_\_\_

Name: **[REDACTED]**

Title: **[REDACTED]**

**[REDACTED]**

Per \_\_\_\_\_

Name: **[REDACTED]**

Title: **[REDACTED]**

We have authority to bind the partnership.

**MASS. ELECTRIC CONSTRUCTION CANADA CO.**

Per: \_\_\_\_\_

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation.

**WSP CANADA INC.**

Per: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.

*(Signature Page to Alliance Development Agreement)*

**SCHEDULE 1  
TEAM CONTACT DETAILS**

**PART A - CONTACT DETAILS**

**If to Owner:**

Metrolinx:

Address: Metrolinx  
97 Front St West  
Toronto, Ontario  
M5J 1E6

Attention: [REDACTED]  
Tel: [REDACTED]  
Email: [REDACTED]

and to

Ontario Infrastructure and Lands Corporation:

Address: Ontario Infrastructure and Lands Corporation  
Suite 2400, 1 Dundas Street West  
Toronto, Ontario  
M5G 1Z3

Attention: [REDACTED]  
Tel: [REDACTED]  
Email: [REDACTED]

**If to NOP 1:**

Address: Kiewit-Alberici Union General Partnership

[REDACTED]

Attention: [REDACTED]  
Tel: [REDACTED]  
Email: [REDACTED]

and to [REDACTED]

Attention: [REDACTED]  
Tel: [REDACTED]  
Email: [REDACTED]

**If to NOP 2:**

Address: Mass. Electric Construction Canada Co.

CAN DMS: \145784179\2

1405 North Service Road East, Unit 4  
Oakville, Ontario  
L6H 1A7

Attention: **[REDACTED]**  
Tel: **[REDACTED]**  
Email: **[REDACTED]**

**If to NOP 3:**

Address: WSP Canada Inc.  
1600 Boulevard Rene-Levesque West  
11<sup>th</sup> Floor  
Montreal, Quebec  
H3H 1P9

Attention: **[REDACTED]**  
Tel: **[REDACTED]**  
Email: **[REDACTED]**

Representative	Particular
Owner's Representative	<p>[REDACTED]            Tel: [REDACTED]            Email: [REDACTED]</p>
ALT representatives	<p><b>Owner Participant</b>            [REDACTED]            Tel: [REDACTED]            Email: [REDACTED]</p> <p><b>NOP 1 (Kiewit-Alberici Union General Partnership)</b>            [REDACTED]            Tel: [REDACTED]            Email: [REDACTED]</p> <p><b>NOP 2 (Mass. Electric Construction Canada Co.)</b>            [REDACTED]            Tel: [REDACTED]            Email: [REDACTED]</p> <p><b>NOP 3 (WSP Canada Inc.)</b>            [REDACTED]            Tel: [REDACTED]            Email: [REDACTED]</p>
Alternative ALT representatives	<p><b>Owner Participant</b>            [REDACTED]            Tel: [REDACTED]            Email: [REDACTED]</p> <p><b>NOP 1 (Kiewit-Alberici Union General Partnership)</b>            [REDACTED]            [REDACTED]            [REDACTED]</p> <p><b>NOP 2 (Mass. Electric Construction Canada Co.)</b>            [REDACTED]            [REDACTED]            [REDACTED]</p>

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Representative	Particular
	<b>NOP 3 (WSP Canada Inc.)</b> [REDACTED] [REDACTED] [REDACTED]
Alliance Director	[REDACTED] Tel: [REDACTED] Email: [REDACTED]



## **SCHEDULE 2 SERVICES**

### **1** Composition of the Services

#### 1.1 The Services comprise:

- 1.1.1 Preparation of Estimates pursuant to any Request for Estimate issued by the Owner's Representative;
- 1.1.2 preparation of a Project Proposal for submission to the Owner in accordance with the terms of this ADA;
- 1.1.3 preparation of Early Works Proposals for submission to the Owner's Representative in accordance with the terms of this ADA; and
- 1.1.4 participation in the activities listed in Sections 2 through 6 of this Schedule 2.

1.2 In establishing resources required for the AD Participants and the ALT to be utilized in connection with this ADA from time to time in accordance with this ADA, the Parties must have regard to the extent of the Services required at that time and utilize and allocate to this ADA only such resources as are reasonably required in order to deliver the Services under this ADA in a cost effective manner and in accordance with this ADA.

### **2** Progress reporting

The AD Participants must provide to the Owner's Representative a monthly progress report in respect of the Services and the AD Participants' progress against the schedule for the AD Phase agreed as part of the AD Establishment Framework and the relevant approved Estimate.

### **3** Presentation of Proposals to the Owner

On or prior to the Submission Date, the ALT will present any Early Works Proposal or the Project Proposal (as applicable) to the Owner for consideration.

### **4** Establishment and operation of ALT

The Participants must ensure that the ALT performs the roles and duties of the ALT required under this ADA.

### **5** Establishment of the ALT, AMT and appointment of the Alliance Director

- 5.1 The Parties shall engage in the establishment of the ALT in accordance with Section 4 of the ADA and the AD Establishment Framework.
- 5.2 The Parties shall engage in the establishment of the AMT in accordance with Section 6 of the ADA.
- 5.3 The Alliance Director shall be appointed in accordance with Section 6 of the ADA.

## 6 AD Establishment Framework

- 6.1 The AD Establishment Framework will comprise the following activities:
- 6.1.1 a meeting of the ALT members to reach agreement of the ALT on the Mobilization Plan for the AD Phase that includes strategy, timing and a plan to mobilize the AD Participants and their respective resources, taking into account the 100-day mobilization plan that the NOPs submitted as part of their RFP Proposal Technical Submission, within ten (10) Business Days of the ADA Commencement Date;
  - 6.1.2 participation in the AD foundation workshop (“**AD Foundation Workshop**”) for the ALT representatives, the Alliance Director and the AMT members to introduce each other and to develop and agree upon the Alliance Charter, consistent with the principles and objectives set forth in Section 3.1 of the ADA;
  - 6.1.3 agreement of the ALT on the proposed approach to, and team structure for, the AD Phase;
  - 6.1.4 confirmation of the ALT of the Alliance Team Protocols;
  - 6.1.5 agreement of the ALT on the Governance Plan for the Project;
  - 6.1.6 agreement of the ALT on how the Project Proposal and any Early Works Proposal are going to be developed by the AD Participants, including development of the Target Outturn Cost; and
  - 6.1.7 confirmation of the appointment of the Alliance Auditor.
- 6.2 The Estimate in respect of the Project Proposal, including a Baseline Schedule and a critique of the Owner’s Project budget estimate, shall be submitted to the Owner’s Representative within forty (40) days of the ADA Commencement Date.
- 6.3 The Mobilization Plan shall include the components set forth in Annex 1 to this Schedule 2 (Services).

## 7 Alliance Auditor

- 7.1 The ALT shall engage an independent alliance auditor (the “**Alliance Auditor**”) to undertake any audit:
- 7.1.1 as required in accordance with this ADA;
  - 7.1.2 as may be directed by the ALT;
  - 7.1.3 as stated in the relevant audit plan approved by the ALT,
- and the audit cost incurred are Actual Costs.
- 7.2 The ALT shall approve the terms of engagement of the Alliance Auditor, including a scope of work.

## Annex 1 to Schedule 2 (Services)

### 1.0 Mobilization Plan

1.1 The 100-day Mobilization Plan must respond to the following components:

- (a) Resources
  - (i) Describe ALT strategy to onboard and have resources readily available at each level of the AMT and APT to begin the AD Phase, including training and how to manage the mobilization activities.
- (b) Project Office
  - (i) Describe a strategy for Project Office set-up, including the parties and personnel that should be co-located, as well as a communication strategy to coordinate the Services with any virtual teams.
- (c) Design Development and Target Outturn Cost
  - (i) Describe strategies, processes and systems that will be used to foster collaboration, innovation and efficiency for design development. Describe interfaces that will have an impact on the project and how the ALT will manage these interfaces, including interfaces with third party stakeholders.
  - (ii) Describe strategies that will be used to develop the Target Outturn Cost.
- (d) AD Phase Schedule and Cost Management
  - (i) Provide a Level 3 AD Phase schedule as well as approach to monitor progress. The schedule shall be provided in Gantt Chart format using Primavera P6 Professional Release: 8.3.0 or newer, and shall be developed further from the version submitted as part of the RFP Proposal Technical Submission. The ALT should populate the list of deliverables and activities that are expected to be accomplished during the AD Phase, including delivery of the Estimate in respect of the Project Proposal.
  - (ii) Provide an approach and a schedule, within the AD Phase schedule, for establishing the cost for the AD Phase as well as describe the strategies, processes and systems that will be used to track and control cost and schedule during the AD Phase. This AD Phase cost must be determined within forty (40) days after the ADA Commencement Date. Detail approach that will ensure accurate cost accounting and cost forecasting on a continuous basis.
- (e) Early Works and Engineering Investigations
  - (i) Describe an approach to managing Early Works and site investigations (e.g. engineering investigation, utilities relocation) during the AD Phase.
- (f) Other Elements of the Project Management System
  - (i) Describe any additional elements of the Project and the Project Management System required to enable the ALT to successfully manage the AD Phase (*additional elements may include project control, quality control, reporting system, document control system, etc.*).

## **SCHEDULE 3 PROJECT PROPOSAL**

The Project Proposal comprises such of the following documents as stated in the RFP, Request for Estimate or as may otherwise be notified by the Owner's Representative to the NOPs from time to time:

### **1 VFM Statement**

The VFM Statement is attached to the PAA as Schedule 7 – VFM Statement. Reference the VFM Statement and include a compliance statement outlining how individual VFM requirements will be achieved.

### **2 Design Development**

Set out a summary of all design documentation and drawings in a conclusive report endorsed by the Owner's Representative, with completion of a stage gate review. The following components must be documented and confirmed:

- Design Management Plan including but not limited to:
  - Design Strategy;
  - Design Process and Management;
  - Document Control;
  - Design team and roles and responsibilities;
  - Design requirements and design standards;
  - Summary of all design documentation and drawings;
  - Safety in design process;
  - Design for cost process;
  - Design Hazards process;
  - Design Compliance process;
  - Completed Design Excellence Review Panel Presentations;
  - Completed stage gate review.
- Systems Engineering Management Plan including but not limited to:
  - Output Specifications;
  - Requirements Management;
  - Configuration and Change Management;
  - Systems Integration;

- Stakeholder Management;
- Interface Control document;
- Verification and Validation Management;
- Associated site constraints;
- Outline third party agreement compliance matrix;
- Signaling design coordination and integration plan;
- Heritage Approvals and Protection Measures;
- Complete Pre-construction Condition Surveys and Impact Assessment Reports; and
- Attach final form of report.

### **3 Construction Planning**

Set out a summary of the construction plan including the following:

- Rail Corridor Access Plan and staging plans including site access points and track possessions, laydown areas, temporary access, White Period Possessions and Disruptive Possessions for each calendar year and cumulatively across the project life cycle. The plan must comply with the requirements the Project Alliance Agreement;
- Outline Work Plan;
- Access Management Plan;
- Utilities Management Plan;
- Permitting Requirements Plan and Permit Application Plan;
- Outline Commissioning Program;
- Legacy Initiatives;
- Outline Communications and Public Engagement Protocol;
- Site Safety Manual;
- Environmental Management Plan;
- Noise and Vibration Control Plan;
- Pest Control Management Plan;
- Archaeological Risk Management Plan;
- Protection and Relocation Plan for critical infrastructures and services;
- Adjacent building condition monitoring plan;

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- Outline Traffic Control Plan; and
- Resources Management Plan including on track plant and key resources, and outline training plan including safety induction program, team building strategy and apprentice program.

#### **4 Scope of Works**

Set out the complete Scope of Works (including any Early Works to be completed following the Commencement Date) as further developed during the AD Phase and confirmed by the Owner's Representative, including (but without limitation) attachment of relevant specifications, drawings, assumptions, clarifications, constraints, benefits, mock-up plans, future proof requirements for level boarding; Alliance scope split; identification and confirmation of any Additional Lands required for the Project and the cost of obtaining Additional Lands; identification of any Additional Owner Permanent Lands (as such term is defined in the ADA) required for the Project; confirmation of the Lands to be included within Schedule 18- Lands of the Project Alliance Agreement; confirmation of utility requirements, and other documents describing the Scope of Works, as necessary. Include any innovations and alternative technical solutions, warranties for specific products; extended warranties as applicable; spares list identified during the AD Phase.

#### **5 Target Outturn Cost Validation Report**

The format of the TOC Validation Report as agreed with the Owner's Representative, including the Target Outturn Cost, Risk and Contingency Provision, and Fee. The TOC shall also outline the following information: Actual Cost of Early Works (to the extent that they are to be completed following the Commencement Date), spending curve (monthly spending forecast), benchmarking, salvage value approach to plant that will be returned to the Owner, and lifecycle cost. TOC breakdown shall follow the estimate template provided by the Owner's Representative.

Attach the calculation and methodology of Actualized Rates in accordance with Schedule 9 – Actual Cost of the Project Alliance Agreement.

Attach the final form of the report which must contain the details of the allowance made for the Owner Participant provided resources and/or services within the Target Outturn Cost, Risk and Contingency Provision and the charge-out basis on which they are nominally to be charged (Owner's Participant Actual Costs). Include the estimate of aggregate Actual Costs and note exclusions to Actual Costs as applicable. Include a narrative to support the build up.

#### **6 Baseline Works Schedule**

Attach Baseline Works Schedule and Works Schedule Assumptions Report in accordance with the schedule requirements as approved by the Owners' Representative and provide key milestones including but not limited to Date of Works Commencement, Date for Completion, long lead items, defects correction period, quantitative schedule risk analysis (QSRA) ([REDACTED]% and [REDACTED]% probability) report, TILOS, staging diagrams, assumptions report & method statements, schedule management process and ownership.

The Baseline Works Schedule shall, but not limited to:

- be produce using the latest version of Primavera P6;
- be detailed and structured in accordance with the work breakdown structure to be agreed by the Participants;
- be costs and resources loaded down to level 5 activities;

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- allow for fully detailed earned value management reporting, including schedule performance index (SPI), cost performance index (CPI), to complete performance index (TCPI) and estimate to complete (ETC) forecast, all in accordance with the most current Project Management Institute (PMI) Practice Standard for Earned Value Management; and
- not include any delays unless otherwise agreed to by the Participants and the Owner. Any delay and resulting mitigation measures shall only be shown in the Progress Works Schedule.
- Include key works milestones grouped together at the top of the Baseline Works schedule in a section titled “Key Milestones”:

Structure the following works activities and works milestones in such a way to clearly indicate the Alliance’s overall approach, phasing and sequencing of the planning and execution of the Works, including - key works activities; primary works milestones; primary works activities; any other activities required by the Participants to fulfill the requirements for the Project.

- The Works Schedule Assumptions Report shall be submitted with the Baseline Works Schedule, any subsequent update or revision of the Baseline Works Schedule, and each subsequent Progress Works Schedule.
- The Works Schedule Assumptions Report shall include (without limitation) the following report sections and related content, at a minimum:
  - Cover page including title “Works Schedule Assumptions Report”, the project title, date of the report, issuance date, version date, and the version number of the relevant Baseline Works Schedule or Progress Works Schedule, and the ALT members signature approving the report.
  - “1. Implementation Strategy”, including a including a written narrative of no more than 750 words describing the overall approach, proposed sequencing and work plan to complete the Works required to achieve Completion;
  - “2. Critical Path Risk”, including a narrative in tabular form describing the risks to completing the critical path activities to achieve Completion, and Participants’ strategy to mitigate or avoid these risks;
  - “3. Planned Working Calendar”, including a table defining each of the schedule calendars. For each calendar include the work days (days of the week), normal working hours, number and hours of any shifts, and a list of all assumed non-working days for any part of the Works (such as holidays and environment restricted work windows);
  - “4. Means and Methods”, including an executive summary of the intended means and methods for all major elements (key works activities and primary works activities) and include for each a short narrative on the type of work, any constructability issues and if the work will be self-performed by NOPs or sub-contracted;
  - “5. Resource Plan”, including:
    - Number of teams and team composition (i.e. manpower requirements) including subcontractor work;

- Number and type of heavy machinery or equipment;
- Anticipated resource constraints (such as union related constraints and limits to the number of any specific heavy machinery available in the region), and
- A written narrative of no more than 250 words describing how NOPs intends to meet the resource requirements.

## **7 Completion of the Works**

Define the process to be implemented by the Alliance to comply with the obligations described in PAA Section 24 (Completion), including:

- the methodology and associated documentation required for determining and validating Completion of the Works against the Stated Purpose, and in accordance with the VFM Statement;
- the methodology and the associated documentation required to demonstrate overall systems integration, and the verification and validation of requirements and outputs;
- the process for identifying the requirements of all relevant certifying authorities and insurance surveyors, and confirming these have been complied with for the purpose of achieving Completion;
- the identification of the testing and commissioning activities required to take place for compliance with the PAA and any Applicable Law to reach Completion, and the process for validating the successful completion of those activities;
- the process, documentation, and responsible parties which support the review, update and validation of the safety case;
- an outline of the documentation, including but not limited to design documents, risk registers, construction surveys, material and equipment warranties, training manuals, operation and maintenance manuals, and as constructed information reasonably required by the Owner with respect to the Works, and the timeline for delivery of this documentation to the Owner and/or any Third Parties, as applicable; and
- the process for identifying, tracking, and validating the rectification of minor Defects during the Defects Correction Period.

## **8 Risk or Reward Regime**

Risk or Reward Regime including the allocation of Risk or Reward and Overhead and Profit between NOPs to be developed as part of the Services. Attach final form and include the Gainshare calculator (an Excel spreadsheet) appended. This must state each NOP Split as defined in the Project Alliance Agreement. Identify Key Result Areas (KRA), key performance indicators (KPI), Minimum Condition of Satisfaction (MCOS) and Performance Modifiers, recordable events and method for recording events.

## **9 Alliance Risk and Opportunity Report**

The format of the Alliance Risk and Opportunity Report shall be developed jointly and agreed with the Owner's Representative and will include the Risk and Contingency Provision, Quantitative

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Schedule Risk Analysis report and Quantitative Cost Risk Analysis report. Attach final form of report.

**10 Adjustment Event Guidelines and Scope Variation Benchmarking Guidelines**

Attach any Adjustment Event Guidelines and Scope Variation Benchmarking Guidelines and list any additional Adjustment Events and/or Scope Variation examples.

**11 Governance Plan**

To be agreed with the Alliance Leadership Team. To include but not limited to: functions of the Alliance Management Team, Alliance Director and Alliance Leadership Team; Responsibilities Matrix; and Alliance Leadership Team backup. Attach final form of the Governance Plan.

**12 Project Management System**

To be developed as part of the Services and agreed with the ALT. To include but not limited to:

- Reporting Requirements including Key Result Areas performance report template; health & safety report template; Alliance Risk and Opportunity Report; draft cash flow statements; Work Status Report template; Retention of Records Requirements;
- Contracting and subcontracting strategy; supply chain partners; affiliated subcontracts; description of implementation works subcontracts;
- Project Execution Plan including, but not limited to, organisational structure, hiring strategy, procurement strategy;
- Project Office arrangement;
- Quality Management Plan;
- Stakeholder Management Plan;
- Relationship Management Plan;
- Change Management Plan;
- Project Controls Plan; and
- Project Insurance Manual.

Attach final form of Project Management System.

**13 Amendments proposed to the form of PAA and information required in relation to the PAA**

List any proposed amendments to the PAA agreed to by the ALT. For the avoidance of doubt, these are to be limited to project specific amendments or those which provide demonstrable value for money to the Owner, and in either case are not a material change to the PAA. Also list any information that is required to be inserted in the Schedules to the PAA for purposes of execution, including any bulleted information.

**14 Overhead and Profit and Contingency Provision**

The NOPs must apply Overhead and Profit percentages no greater than the levels submitted within the RFP Proposal Commercial Submission and otherwise in accordance with the Project Alliance Agreement (as per Schedule 10 – Fee of the Project Alliance Agreement), distinguishing between Works which are to be self-performed and Works to be performed by means of a Subcontract. State the total amount of both Overhead and Profit in dollars (applying the relevant percentages).

State the Risk and Contingency Provision set forth in the Alliance Risk and Opportunity Report.

**15 Owner Participant's Role and Owner Participant's component of Target Outturn Cost**

Set out (as notified by the Owner's Representative in the relevant Request for Estimate and/or during the development of the Project Proposal) the extent of the Owner Participant's expected role and the Owner Participant's component of the Target Outturn Cost and the Risk and Contingency Provision, including the prescribed or liquidated rates and/or the method of determining any Actual Cost to be incurred by the Owner Participant. Cross reference these elements within the relevant parts of the Project Proposal.

## **SCHEDULE 4 ACTUAL COST**

### **1. INTRODUCTION**

#### **1.1 Definition of Actual Cost**

Subject to Sections 4 and 6 of this Schedule 4 (Actual Cost) and any specific exclusions contained in this ADA, "**Actual Costs**" means those costs and expenses that are both:

- 1.1.1 reasonably and actually incurred by the AD Participants in connection with the Works (excluding any corporate overhead component not specific to the Works and any profit or mark up of any kind); and
- 1.1.2 described in Annex 1 and Annex 2 to this Schedule 4 (Actual Cost), or which this ADA otherwise expressly provides will be Actual Cost.

#### **1.2 Exclusion of overheads and profit from Actual Cost**

It is a fundamental underlying principle of this ADA that, except for Overhead and Profit, no AD Participant will derive any mark-up, overhead, profit or unreasonable advantage from the utilization of their resources for the Works.

#### **1.3 Request for Estimate**

Notwithstanding any other provision in this ADA, Actual Costs shall only be chargeable to the Owner by any AD Participant from the date stated in the relevant Request for Estimate for each AD Participant or, to the extent no such date is specified, from the date of receipt by the relevant AD Participant of such Request for Estimate.

#### **1.4 Set Off of recovered damages**

The Owner may set off any damages (liquidated and unliquidated) recovered by any AD Participant from its sub-contractors, suppliers and the like against any Actual Costs to be paid to that AD Participant.

### **2 COST ELEMENT ALLOCATION TABLES**

#### **2.1 Allocation of cost elements in Tables A to I**

Tables A through I of Annex 1 to this Schedule 4 (Actual Cost) ("**Cost Element Allocation Tables**") allocate various cost elements between Actual Cost, Overhead or Profit.

### **3 OWNER PARTICIPANT**

#### **3.1 Owner Participant Actual Costs**

The categories of Owner Participant Actual Cost are included at Annex 2 to this Schedule 4 (Actual Cost).

## **4 THE ALT MAY DETERMINE ACTUAL COST**

### **4.1 ALT determination as to Actual Cost**

The ALT may determine, in accordance with ADA Section 4.5, that any cost, notwithstanding that it is not otherwise an Actual Cost in accordance with this Schedule 4 (Actual Cost), shall be considered an Actual Cost.

## **5 AFFILIATED SUBCONTRACTS**

### **5.1 Works Undertaken by Affiliated Subcontractors**

The provisions of this Section 5 will apply in respect of any Works undertaken by Affiliated Subcontractors unless the ALT has agreed otherwise in respect of a specific NOP and its proposed Affiliated Subcontract:

5.1.1 Notwithstanding Section 1 of this Schedule 4 (Actual Cost), the amount allowable as Actual Costs in relation to an Affiliated Subcontract is:

5.1.1.1 the amount payable under and in accordance with the Affiliated Subcontract; less

5.1.1.2 the Affiliate Subcontract Fee.

Accordingly, the Affiliate Subcontract Fee is deemed only to be recoverable by the relevant NOP within the Overhead and Profit (if any) payable to that NOP in respect of the Actual Costs incurred under the applicable Affiliated Subcontract.

5.1.2 Where and to the extent that an Affiliated Subcontract is priced on an actual cost basis (e.g. cost reimbursable, target cost or otherwise):

5.1.2.1 the component of the Actual Cost (excluding the Affiliate Subcontract Fee) that is payable to the relevant NOP in respect of that Affiliated Subcontract must be determined on the basis that Schedule 4 (Actual Cost) is deemed to apply to the determination of those actual costs under the Affiliated Subcontract; and

5.1.2.2 for clarity, Section 5.1.3 will apply notwithstanding the terms of the relevant Affiliated Subcontract, or the amount actually payable in respect of such actual costs under that Affiliated Subcontract.

5.1.3 An authorised representative of each NOP must:

5.1.3.1 within 20 Business Days of the end of each Financial Year; and

5.1.3.2 at the end of the AD Phase and in respect of the Financial Year in which the AD Phase ends,

certify that all Actual Costs claimed by the relevant NOP are net of all discounts, incentives, benefits and the like that may have been provided to the NOP by any supplier or subcontractor and the like during the relevant Financial Year.

5.1.4 The certification under Section 5.1.3 of this Schedule 4 in respect of any NOP must confirm for that NOP and its Affiliated Subcontractor that:

- 5.1.4.1 no Overhead has been recovered as Actual Costs; and
  - 5.1.4.2 no mark-up, profit and the like other than the Profit has been recovered,
- by that NOP and its respective Affiliated Subcontractors and any such recovery of Actual Costs or profit discovered in the course of any audit must be repaid forthwith by the relevant NOP.

## **6 EXCLUSIONS**

### **6.1 Exclusions from Actual Cost**

The following costs incurred by the AD Participants will not be Actual Cost (and to the extent that they have previously been recognized as Actual Cost will be credited against Actual Cost):

- 6.1.1 any costs incurred by an AD Participant in performing any works or services which cannot be properly and reasonably justified by an AD Participant's accounts and records;
- 6.1.2 any costs incurred by an AD Participant in performing any works or services which relate to equipment and resources not used by an AD Participant in providing the Works;
- 6.1.3 any costs relating to a subcontract (or contract for supply) where an AD Participant has not complied with the Owner's previously notified procurement policies in the procurement or tender process in respect of that subcontract (or contract for supply);
- 6.1.4 any legal costs incurred by an AD Participant in defending any prosecution or claim brought against an AD Participant by a Governmental Authority by reason of an alleged breach of Applicable Law, except where the Owner's Representative determines otherwise by notice in writing to the AD Participant, having regard to the nature of the breach and the effect of the breach on the Project, the Works and the Owner;
- 6.1.5 any costs, liabilities or payments incurred or made by an AD Participant in indemnifying another AD Participant in accordance with this ADA;
- 6.1.6 any costs incurred by an AD Participant in providing any difference in insurance coverage to supplement the insurance requirements referred to in this ADA;
- 6.1.7 any costs, losses, damages and expenses suffered or incurred by a NOP arising out of or in connection with a Default and/or exclusion and/or termination under Section 20 of this ADA, except as otherwise provided therein;
- 6.1.8 any corporate or personal income tax or capital gains tax imposed on an AD Participant;
- 6.1.9 HST;
- 6.1.10 any penalties or fines in respect of the payment of any fees, charges, duties royalties, licences and statutory charges of any kind imposed with respect to the Works;
- 6.1.11 any costs incurred by a NOP, or to be incurred by a NOP, which were excluded from Actual Cost as part of the Estimate Approval;
- 6.1.12 any costs or expenses (including legal costs and expenses) arising out of or in connection with the relocation of personnel or human resources by AD Participants, unless expressly approved by the ALT or pursuant to an expense policy approved by the ALT;

- 6.1.13 any costs associated with pre-existing medical conditions and medical examinations for current employees nominated for the Project;
- 6.1.14 any costs or expenses (including legal costs and expenses) arising out of or in connection with any vacation or personal leave escalation, or additional net accrual for increasing an employee's employment entitlements, beyond the accrual in the employment related on-costs;
- 6.1.15 other than as expressly approved by the ALT, living away from home allowances or any other living allowances or supplementary payments;
- 6.1.16 any costs arising out of or in connection with specialized personnel's travel, relocation or accommodation, except where expressly approved by the ALT or under an expense policy approved by the ALT;
- 6.1.17 any costs or expenses arising out of or in connection with corporate training, including cost of training and cost of time of attending the training, unless otherwise in accordance with an ALT approved training program;
- 6.1.18 information technology support staff or system administrators from any corporate head office, unless directly related to supporting Project Office located Employed Staff or Site Labour;
- 6.1.19 software development costs associated with corporate software, being software for which the prime application is not delivery of the Project;
- 6.1.20 any costs or expenses arising out of or in connection with reimbursement for a handling fee or mark-up on disbursements and sub-consultants;
- 6.1.21 any contribution to corporate overhead costs or expenses, or any profit or unreasonable advantage from the utilization of people, plant, equipment, software or resources;
- 6.1.22 any amount paid or payable by or on behalf of an AD Participant to a supplier to the extent that the AD Participant is entitled to claim and retain an input tax credit in respect of that payment;
- 6.1.23 a Change in Control under Section 22.8 of this ADA;
- 6.1.24 any legal or consultant cost in connection with an adjudication to resolve a dispute in accordance with Section 5.3 of this ADA;
- 6.1.25 any amount paid or payable by or on behalf of a NOP to a supplier which is an Affiliate of the relevant NOP on account of profit or corporate overhead, except where expressly approved by the ALT; and
- 6.1.26 any costs incurred by an AD Participant, or to be incurred by an AD Participant, specifically excluded under this ADA as being an Actual Cost.

## **7 Use of Actualized Rates**

- 7.1 Any Actualized Rate for a NOP may be used under this ADA as a proxy for Actual Cost (otherwise derived in accordance with this ADA) for that NOP where and to the extent such Actualized Rate has been approved for use by the ALT in accordance with Section 7.2.1 of this Schedule 4 (Actual Costs). For the avoidance of doubt, any approval, deemed approval or provisional approval given

by the ALT to the use of Actualized Rates of any NOP under this Section 7.1 does not extend to any other NOP, Affiliated Subcontractor of a NOP, or Subcontractor.

7.2 The provisions of this Section 7.2 apply to the use of Actualized Rates as a proxy for Actual Cost by any NOP in accordance with this ADA:

7.2.1 The ALT may from time to time acting reasonably approve an Actualized Rate (or revised Actualized Rate) proposed by any NOP in respect of that NOP's Employed Staff (Table B) and/or Site Labour (Table C) engaged on the Works during each Actualized Period on production of a worked example by that NOP in respect of the proposed Actualized Rate showing:

7.2.1.1 the specific account codes where the actual salary costs and employer on-costs are debited in that NOP's accounting systems;

7.2.1.2 the specific accounting codes where the staff costs, based on rates charged to other projects are credited in that NOP's accounting system;

7.2.1.3 a demonstration of that NOP's proposed regular reconciliation process which compares actual salary costs to the costs charged to projects and how any differences are subsequently reflected in adjusted rates;

7.2.1.4 the calculation of the Actualized Rate is in accordance with the methodology stated in the approved Estimate or Early Works Proposal (as applicable) for the relevant Services or Works; and

7.2.1.5 such other information or substantiation as the ALT may reasonably require,

and the ALT may require the Alliance Auditor to review or investigate any such proposed Actualized Rate and/or its worked example and may approve the use of an Actualized Rate on a provisional basis (which may be withdrawn by the ALT on a retrospective basis at any time) pending satisfaction of such conditions as the ALT may reasonably require. For the avoidance of doubt, a failure to submit a satisfactory worked example entitles the ALT to withhold approval of the relevant proposed Actualized Rate.

7.2.2 Subject to Section 7.2.7, where and to the extent Actualized Rates have been approved and determined in accordance with this Section 7.2 in respect of any:

7.2.2.1 NOP;

7.2.2.2 Actualized Category; and

7.2.2.3 Current Actualized Period,

notwithstanding any other provision in this Schedule 4 (Actual Cost), the Actual Costs payable to that NOP pursuant to this Schedule 4 (Actual Costs) in respect of that NOP's Employed Staff and/or Site Labour in that Actualized Category during the Current Actualized Period are to be deemed to be the aggregate of:

7.2.2.4 the relevant Actualized Rates; multiplied

7.2.2.5 by the total hours which would otherwise be recoverable as Actual Costs (excluding for the avoidance of doubt all non-cost hours such as overhead allocation, or where the resources used receive no pay in respect of the

hours worked, or where the total daily hours exceed the standard daily hours assumed in the calculation of the relevant Actualized Rate),

for all such Employed Staff and/or Site Labour in that Actualized Category during the period within the Current Actualized Period to which any payment of Actual Cost relates.

7.2.3 Where at any time the use of Actualized Rates by a NOP are found following an audit (carried out by the Alliance Auditor) not to fairly represent a proxy for Actual Costs, then the ALT may, at their sole discretion (for which determination the NOP concerned shall not be entitled to vote) revoke the approval to use Actualized Rates and the NOP concerned shall forthwith present its Actual Costs as defined herein (less any Actual Costs allowed for or included by the NOP as part of the Overhead) for reimbursement in lieu of Actualized Rates. If Actual Costs the subject of Actualized Rates remain unaudited for twenty (20) Business Days following a request by the Owner's Representative or ALT to do so or if any audit shows that any Actualized Rates are not a proxy for their related Actual Costs, then either the Owner's Representative or the ALT may decide, at their sole discretion, to discontinue the use of Actualized Rates by the relevant NOP as a proxy for Actual Cost for the period since the date of the last satisfactory audit of those Actualized Rates to such date as the Owner's Representative or ALT may notify.

7.2.4 The Actualized Rate for each:

7.2.4.1 NOP;

7.2.4.2 Actualized Category; and

7.2.4.3 Current Actualized Period,

is determined at the expiry of the Preceding Period in accordance with the methodology stated in the approved Estimate or Early Works Proposal (as applicable).

7.2.5 Actualized Rates for each relevant NOP shall be subject to reconciliation not less than once annually (and otherwise where determined by the ALT) by the relevant NOP to demonstrate that the recovery of cost by the use of Actualized Rates for any resource used in performing the Works is not significantly different to the Actual Cost incurred by that NOP for that resource, and such reconciliation shall be audited by the Alliance Auditor.

7.2.6 Where any discrepancy in the reconciliation is discovered by the Alliance Auditor in an audit under Section 7.2.5, the matter shall be referred to the ALT for resolution and the ALT must direct that any overpayment is repaid by the relevant NOP to the Owner or that any underpayment is paid by the Owner to the relevant NOP as Actual Cost.

7.2.7 For each NOP, each Actualized Category and each Current Actualized Period, as soon as practicable following:

7.2.7.1 the end of the relevant Preceding Period; and

7.2.7.2 the determination of the Actualized Rates for the relevant Current Actualized Period,

the total amount paid or payable at Actualized Rates to the relevant NOP during that Preceding Period (the "**Initial Actualized Amount**") must be recalculated using the relevant adjusted Actualized Rate determined in accordance with Section 7.2.7.2 (the "**Adjusted Actualized Amount**") and the difference between the Initial Actualized Amount and the Adjusted Actualized Amount (if any) paid to the Owner from the relevant NOP or



to the relevant NOP from the Owner (as the case may be) in the next payment otherwise due under this ADA following determination of such difference (if any) or, if no payment is otherwise due, as a debt due to the Owner or the NOP (as the case may be).

7.2.8 Each NOP using Actualized Rates as a proxy for Actual Costs for Employed Staff and/or Site Labour in each Actualized Category must maintain a review of the trends of its costs and billable hours for each Actualized Category between each Actualized Period, and must promptly report, explain and justify to the ALT any significant difference to the Actual Costs being incurred by it in the relevant Actualized Category during each Current Actualized Period, in order to ensure that any such person has the opportunity to mitigate any adverse trends that may lead to an overspend of the relevant NOP's estimated expenditure in connection with the Works.

7.2.9 The determination and use as a proxy for Actual Cost of all Actualized Rates, Initial Actualized Amounts and Adjusted Actualized Amounts under this ADA must be approved by the ALT and may be audited by the Alliance Auditor at any time.

## **8 Disputes as to Actual Costs**

8.1 To the extent that Actual Costs are alleged by an AD Participant to be not clear, any dispute shall be resolved by the AMT or in default of agreement, by the ALT.

8.2 In the event the review team within the AMT fails to agree on whether a particular estimated or incurred Actual Cost submitted by an AD Participant is allowable in accordance with this ADA or not, the matter shall be referred to the ALT. The ALT may then either consider the matter without further review or may require the Alliance Auditor to audit the matter in dispute only and report back to the ALT within fourteen days of his/her being appointed to carry out the audit.

8.3 The level of detail required to support an AD Participant's Actual Costs will be determined and agreed by the ALT subject to the amount of documentary evidence and records that will be required to be provided by each AD Participant in accordance with this Schedule 4 (Actual Costs) and the Alliance Auditor.

## **9 Cost Control**

9.1 Within ten (10) Business Days of the ADA Commencement Date, the AD Participants must jointly set up and agree with the ALT a method for the recording and control of all Actual Costs against a cash flow payment plan provided by each AD Participant on the basis of three month's estimate of the likely Actual Costs to be incurred in respect of the Works (which estimates will be provided to the other AD Participants for review and audit). Such cost recording must be aligned to the agreed Work Breakdown Structure ("**WBS**") for the Works.

9.2 Each AD Participant must prepare the three-monthly estimates required pursuant to Section 9.1 of this Schedule 4 (Actual Costs) in sufficient detail to identify:

9.2.1 man-hours;

9.2.2 rates per category of staff;

9.2.3 activities to be undertaken; and

9.2.4 rates, or estimates, or prices for those activities,

and in the event of any such estimate being in insufficient detail for either the AMT or an individual AD Participant to be able to assess whether the estimated Actual Costs are relevant to the Works,

the AD Participant providing the estimate shall provide such further information as may be required by the AMT.

- 9.3 The AMT may determine the manner of recording and the level of approval required for time and costs incurred by each AD Participant's staff and labour (including subcontract labour, agency labour, consultants and the like) which is to be recovered as Actual Costs.
- 9.4 Subject to Section 9.6 of this Schedule 4 (Actual Costs), each AD Participant must submit to the AMT copies of all the AD Participant's (including its subcontractor of any tier) weekly timesheets for all the staff and labour which the AD Participant wishes to recover as Actual Costs signed by a designated manager of the AD Participant and showing the relevant WBS code and activity code.
- 9.5 Subject to Section 9.6 of this Schedule 4 (Actual Costs), each AD Participant must submit to the AMT hard copies of all invoices (including expense sheets and the like) which it wishes to recover as Actual Costs. All such invoices shall state the Works undertaken, the location of the Works and the relevant approved Estimate or Early Works Proposal under which the Services or Works were undertaken.
- 9.6 Provided that:
- 9.6.1 An AD Participant can provide verifiable copies of signed timesheets, invoices, expense sheets and the like by electronic means for the purpose of establishing Actual Costs; and
- 9.6.2 the AMT can establish a procedure for the transmission and secure storage of such records,

the AD Participant may submit such records in the electronic format approved by the AMT.

- 9.7 Any reallocation of Actual Costs (including time costs) by an AD Participant shall only be made by agreement with the AMT and only via an auditable process approved by the Alliance Auditor.

## **10 Audit**

- 10.1 The Alliance Auditor shall carry out the audits described in Section 16.6 of this ADA.
- 10.2 The Alliance Auditor may with the approval of the Alliance Director utilize members of the AMT or APT to carry out elements of any audit work under the direction of the Alliance Auditor where it is considered beneficial and cost effective.
- 10.3 In the spirit of the open-book philosophy set out in Section 3.3 of this ADA and in this Schedule 4 (Actual Cost), each AD Participant has the right to review the estimated and incurred Actual Costs of the other AD Participants. In the event of an AD Participant exercising this right, a review team of one authorised representative from each AD Participant shall be formed within the AMT and shall undertake such reviews as may be directed by the ALT. The AD Participant to be audited will be given fourteen (14) days' written notice of such review. Such a review will be in addition to and not in substitution of the audits carried out by the Alliance Auditor.
- 10.4 In the event the review team within the AMT fail to agree on whether a particular estimated or incurred Actual Cost submitted by an AD Participant is allowable against this ADA or not, the matter shall be referred to the ALT. The ALT may then either consider the matter without further review or may require the Alliance Auditor to audit the matter in dispute only and report back to the ALT within fourteen (14) days of being appointed to carry out the audit.

**Annex 1 to Schedule 4 (Actual Cost) – Cost Element Allocation Tables**

<b>Table A</b> <b>NOP's Overhead and Corporate Office Costs</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>Corporate Office and corporate overhead costs</i>	[REDACTED]	
B.	<i>Overhead costs of Affiliated Subcontractors</i>	[REDACTED]	
C.	<i>Franchises, royalties, licences</i>	[REDACTED]	
D.	<i>Taxes (e.g. property tax, business tax, income tax, etc.)</i>	[REDACTED]	
E.	<i>Interest, financing charges, banking charges</i>	[REDACTED]	
F.	<i>Corporate or entity accounting / auditing costs</i>	[REDACTED]	
G.	<i>Research and development costs (unless specifically approved by the ALT)</i>	[REDACTED]	
H.	<i>Business insurance, warranties, professional indemnity insurance (excluding insurance taken out by the Owner), product liability insurance</i>	[REDACTED]	
I.	<i>Insurance premiums relating to the insurances required to be obtained and maintained by the NOPs as set out in Section 2 of Schedule 9 (Insurance Policies and Bonds) of the ADA including the cost of insurance premiums for events which are at the NOP's risk and which this ADA requires the NOP or the Owner to insure as individual legal entities</i>	[REDACTED]	
J.	<i>Corporate Office<sup>1</sup> paper, printing and stationery</i>	[REDACTED]	
K.	<i>Marketing, sales, and industry conferences</i>	[REDACTED]	
L.	<i>General fees paid on a regular basis (excluding Project Specific general fees instructed by the the Owner's Representative)</i>	[REDACTED]	
M.	<i>Legal advice, fees and services (excluding costs identified in: Table G, Ref B)</i>	[REDACTED]	

<sup>1</sup> **“Corporate Office”** means for purposes of this Schedule 4 (Actual Cost) any office or location where the AD Participant operates its business that is not a Project Office (approved by the ALT). It includes the AD Participant's corporate or head office, as well as any regional, divisional or subsidiary offices.

**Table A**  
**NOP's Overhead and Corporate Office Costs**

Ref	Cost Element	Cost Category	
		Actual Cost	Overhead
N.	Advertising, including agency fees and publication costs	[REDACTED]	
O.	Corporate Office management, technical (exclusive of designated Project Specific Designer NOP staff), administration and service staff and non-Project Specific staff, including HR, Finance, Commercial, Accounts, Purchasing, Occupational Health and Safety, Quality, Environment, and IT	[REDACTED]	
P.	Company cars, where not allocated directly to Project specific staff, including all costs and expenses (except for expenses pre-authorized by the ALT)	[REDACTED]	
Q.	All Corporate Office accommodation costs, including all services, administration, maintenance, furniture, equipment, rent, rates, taxes, telephone, fax, reprographics, couriers, postage (except for any Workstation Charges approved by the ALT)	[REDACTED]	
R.	Corporate Office computer hardware and software systems (except for any Workstation Charges approved by the ALT)	[REDACTED]	
S.	Corporate office recruitment costs, including both staff and agency costs and redundancy, and any Corporate Office human resources/industrial relations management staff (see Table B, Ref M in respect of Project Specific recruitment costs)	[REDACTED]	
T.	Procurement or tendering costs (except where expressly permitted under this ADA or pre-authorized by the ALT)	[REDACTED]	
U.	Charitable donations and entertaining, unless pre-authorized by the ALT	[REDACTED]	
V.	Training (except where expressly permitted under this ADA or pre-authorized by the ALT)	[REDACTED]	
W.	Parent Company Performance Guarantee	[REDACTED]	
X.	Membership fees in trade bodies and professional fees (except where expressly pre-authorized by the ALT)	[REDACTED]	
Y.	Additional Lands	[REDACTED]	

<b>Table B</b>			
<b>Designated Project Specific<sup>2</sup> Costs of NOP's Employed Staff – Including AMT Members</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>NOP's staff who are principally engaged in carrying out work on the Project, including the design and/or design approval process, provided they are detailed on the staff organizational chart approved by the ALT, regardless of whether such staff are located at a Corporate Office, Project Office, or some other location approved by the ALT.</i>	<b>[REDACTED]</b>	
B.	<i>Project Specific secretarial/clerical personnel as detailed on the staff organizational staff approved by the ALT</i>	<b>[REDACTED]</b>	
C.	<p><i>Staff payroll burden consisting of:</i></p> <ul style="list-style-type: none"> <li><i>i. actual salaries (excluding bonuses and incentive payments related to the profitability of the NOP's business);</i></li> <li><i>ii. pre-authorized overtime, week-end or vacation pay allowances, and sick pay (in accordance with the NOP's standard HR policies);</i></li> <li><i>iii. employer contributions to private health/dental insurance and life insurance as per the employee's contract of employment;</i></li> <li><i>iv. employer contributions to OHIP premiums in accordance with Applicable Laws;</i></li> <li><i>v. employer contributions to approved pension schemes (excluding discretionary contributions and special pension contributions that the employer may have to make to the pension fund to make up any shortfall);</i></li> <li><i>vi. employer contributions in respect of Canada Pension Plan (CPP) and Employment Insurance (EI) in accordance with Applicable Law; and</i></li> <li><i>vii. Project Specific staff training inclusive of time spent and course fees, subject to prior written approval by the ALT.</i></li> </ul>	<b>[REDACTED]</b>	
D.	<i>Actualized Rates for staff where these have been approved by the ALT for use as the proxy for Actual Costs in accordance with Section 7 of this Schedule 4 (Actual Costs)</i>	<b>[REDACTED]</b>	

<sup>2</sup> **“Project Specific”** means for purposes of this Schedule 4 (Actual Cost) staff members who principally carry out work of any description in respect of the Project, with the prior approval of the ALT, excluding support staff who fall within the definition of Corporate Office staff. No distinction shall be made between staff working for different divisions within the same legal entity.

<b>Table B</b>			
<b>Designated Project Specific<sup>2</sup> Costs of NOP's Employed Staff – Including AMT Members</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
E.	<i>Employee stock or share purchase plans (unless specifically approved in writing by ALT)</i>	<b>[REDACTED]</b>	
F.	<i>All costs for company cars for Project Specific staff (where allocated directly to staff), including insurance, depreciation, and maintenance. Fuel and fuel allowances to be reimbursed in accordance with the NOP's standard conditions of employment for individual members of the NOP's Project Specific staff.</i>	<b>[REDACTED]</b>	
G.	<i>Staff employee benefits not identified in Ref C above (unless otherwise approved by the ALT)</i>	<b>[REDACTED]</b>	
H.	<i>Travel (domestic), accommodation and subsistence costs (including location allowances) for Site personnel, Project Office based staff, and designated Designer NOP staff, to Site and other authorized Project Specific destinations, subject to the Alliance's expense policy. Any excess costs incurred above those permitted under the Alliance expense policy (approved by the ALT) will not be an Actual Cost.</i>	<b>[REDACTED]</b>	
I.	<i>Travel (domestic), accommodation and subsistence costs (including location allowances) for Corporate Office based personnel (excluding identified Project Specific staff per Ref A), to Site and other authorized Project Specific destinations (unless otherwise approved by the ALT)</i>	<b>[REDACTED]</b>	
J.	<i>Maternity or parental leave payments where the recipient has been engaged on the Services for a reasonable period of time</i>	<b>[REDACTED]</b>	
K.	<i>Long term sickness payments in excess of 3 months or Applicable Law (unless approved by ALT)</i>	<b>[REDACTED]</b>	
L.	<i>Long term sickness payments up to 3 months or Applicable Law where the recipient has been engaged in the Works for a reasonable period of time</i>	<b>[REDACTED]</b>	
M.	<i>Project Specific recruitment costs (subject to ALT approval)</i>	<b>[REDACTED]</b>	
N.	<i>Redundancy costs where the recipient has been engaged on the Works for a reasonable period of time (subject to ALT approval)</i>	<b>[REDACTED]</b>	
O.	<i>Project Specific bonus or incentive payments, not related to the profitability of the NOP's broader business</i>	<b>[REDACTED]</b>	

<b>Table B</b>			
<b>Designated Project Specific<sup>2</sup> Costs of NOP's Employed Staff – Including AMT Members</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
<i>P.</i>	<i>Laptop computers (hardware and software), tablets and mobile phones assigned to Project Specific Staff.</i>	<b>[REDACTED]</b>	
<i>Q.</i>	<i>Personal professional fees and subscriptions</i>	<b>[REDACTED]</b>	

**Table C**  
**NOP's Site Labour**

<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
<i>A.</i>	<p><i>Site Labour costs burden consisting of:</i></p> <ul style="list-style-type: none"> <li><i>i. Worker's total earnings, including pre-authorized overtime (excluding bonuses);</i></li> <li><i>ii. Payments in respect of public holidays and pre-authorized vacation;</i></li> <li><i>iii. Sickness or injury payments;</i></li> <li><i>iv. Employer's contributions to annual vacation credits, pensions, death benefit and other employment benefit schemes (excluding special pension contributions that the NOP (as employer) may have to make to the pension fund to make up any shortfall);</i></li> <li><i>v. Fares or pre-authorized lodging allowances (not relocation allowances);</i></li> <li><i>vi. Tool allowances;</i></li> <li><i>vii. Medical examinations where approved by the ALT (except in the case of pre-existing medical conditions);</i></li> <li><i>viii. Protective clothing (subject to standard NOP policy); and</i></li> <li><i>ix. Project Specific employee training inclusive of time spent and course fees, subject to prior written authorisation by the ALT.</i></li> </ul>	<b>[REDACTED]</b>	
<i>B.</i>	<i>Labour only sub-contract.</i>	<b>[REDACTED]</b>	
<i>C.</i>	<i>Redundancy costs where the recipient has been engaged on the Works for a reasonable period of time (subject to ALT approval).</i>	<b>[REDACTED]</b>	
<i>D.</i>	<i>Project Specific bonus or incentive payments, not related to the profitability of the NOP's broader business (subject to ALT approval).</i>	<b>[REDACTED]</b>	



<b>Table D</b>			
<b>Alliance Project Office(s), Site Establishment and Site Charges (NOP's Equipment)</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>Offices, stores and workshops etc.</i>	[REDACTED]	
B.	<i>Partitioning, racking and fitting out</i>	[REDACTED]	
C.	<i>Temporary foundations and services</i>	[REDACTED]	
D.	<i>Installation and running costs of utilities including water, gas, electricity and other services</i>	[REDACTED]	
E.	<i>Documentation, printing, photocopying and consumables</i>	[REDACTED]	
F.	<i>Project Specific computer hardware and software systems</i>	[REDACTED]	
G.	<i>Cleaning and maintenance</i>	[REDACTED]	
H.	<i>Safety requirements, including first aid, clothing, training, protection systems, inspecting and all other measures required to satisfy Applicable Laws</i>	[REDACTED]	
I.	<i>Project Specific telephones, mobile phones and site communication systems</i>	[REDACTED]	
J.	<i>Security and CCTV</i>	[REDACTED]	
K.	<i>Consumables, tea, coffee, paper and the like</i>	[REDACTED]	
L.	<i>Furniture, fixtures, fittings and equipment</i>	[REDACTED]	
M.	<i>Stationery, postage, courier services and the like</i>	[REDACTED]	
N.	<i>Photography</i>	[REDACTED]	
O.	<i>Temporary roads and hard-standings</i>	[REDACTED]	
P.	<i>Temporary fencing, hoarding and security</i>	[REDACTED]	
Q.	<i>Petty cash</i>	[REDACTED]	

<b>Table D</b>			
<b>Alliance Project Office(s), Site Establishment and Site Charges (NOP's Equipment)</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
R.	Lunch rooms, drying and messing rooms as may be required including maintenance	[REDACTED]	
S.	Road-sweeping, waste disposal	[REDACTED]	
T.	Project Specific technical equipment for surveying and testing, etc	[REDACTED]	
U.	Rent (including other lease costs incurred by virtue of a property lease approved by the ALT), rates and other municipal and statutory charges	[REDACTED]	
V.	Office and equipment costs associated with designated Designer NOP staff working on the Project, wherever they may be located (" <b>Workstation Charge</b> ")	[REDACTED]	
W.	Any other related site establishment and site charges not included in the above (subject to ALT approval)	[REDACTED]	
<p>“√*” means for purposes of this Table D that costs may be charged at quoted rates approved by the ALT ("<b>Actualized Costs</b>"), but only to the extent that such costs are directly related to the Project.</p>			

<b>Table E</b>			
<b>Other NOP Machinery and Equipment</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>Machinery and equipment purchased for incorporation within the Works (as defined in PAA).</i>	<b>[REDACTED]</b>	
B.	<i>Machinery, tools, consumables and equipment required for the design, installation, testing, commissioning and management of the Works, forming part of the Works, either purchased, hired or leased (including track installation and tamping plant; cranes, wheeled and tracked machinery, engineering trains, locomotives and wagons).</i>	<b>[REDACTED]</b>	
C.	<p><i>Own 'internal' NOP's machinery and equipment.</i></p> <p><i>Where the machinery and equipment is purchased specifically for use by the NOP to execute the Works, the cost is the purchase price or the first cost if the NOP assembled, fabricated or otherwise produced the item of equipment. The cost is credited with residual values, as actually realized or if not, as approved by the ALT after that equipment is no longer required by the NOP to execute the Works.</i></p> <p><i>Where the equipment is hired or rented by the NOP from an Affiliate, the costs should be at reasonable market hire or rental rates approved by the ALT.</i></p> <p><i>Where the equipment is owned by the NOP but not purchased specifically for use by the NOP to execute the Works, the costs should be at reasonable market hire or rental rates, subject to approval by the ALT.</i></p>	<b>[REDACTED]</b>	
D.	<i>Hired 'external' NOP's machinery and equipment.</i>	<b>[REDACTED]</b>	
E.	<i>Transportation, erection and dismantling, fuels, oils and other consumables for AD Participant's own and hired or rented NOP's machinery and equipment.</i>	<b>[REDACTED]</b>	
F.	<i>Spare parts and maintenance for NOP's own and hired or rented machinery and equipment.</i>	<b>[REDACTED]</b>	
G.	<i>Site transport (if specified).</i>	<b>[REDACTED]</b>	

<b>Table F</b>			
<b>Materials</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>Materials for incorporation as part of the Works including transportation of materials and insurance (if such insurance is not covered under OCIP) whilst in storage and transit. Also included is the cost of samples and tests and providing and removing packaging. The cost is credited with payments received for the disposal of materials and return packaging.</i>	<b>[REDACTED]</b>	
B.	<i>Subcontractor's materials for incorporation as part of the Works including transportation of materials and insurance (if such insurance is not covered under OCIP) whilst in storage and transit.</i>	<b>[REDACTED]</b>	
C.	<i>Materials for temporary works including formwork, earthwork support, etc.</i>	<b>[REDACTED]</b>	

<b>Table G</b>			
<b>Miscellaneous</b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>The cost of surety bonds required by this ADA.</i>	[REDACTED]	
B.	<i>Legal advice, fees and services specific to the Project instructed and approved by the ALT.</i>	[REDACTED]	
C.	<i>Small tools (picks, shovels, barrows, buckets and similar non-mechanical tools, including small portable power tools).</i>	[REDACTED]	
D.	<i>Haulage and disposal.</i>	[REDACTED]	
E.	<i>The cost of scrap recovery where undertaken by the NOP shall be credited with the payments received for scrap sold or held by the NOP.</i>	[REDACTED]	
F.	<i>Consumables (e.g. welding rods, oxyacetylene, personal protective equipment and clothing etc).</i>	[REDACTED]	
G.	<i>Project expenses (except where incurred for the furtherance or promotion of the individual NOP's business or other interests outside the Alliance), either purchased, rented, leased, or hired and approved by the ALT.</i>	[REDACTED]	
H.	<i>Team building events and other special team functions approved by the ALT.</i>	[REDACTED]	
I.	<i>Manufactured products and goods at the lowest discounted market price current at the date of their supply. The cost is credited with payments received for the disposal of materials and return packaging.</i>	[REDACTED]	
J.	<i>Community engagement costs directly related to the performance of the Works.</i>	[REDACTED]	
K.	<i>Other corporate services or events, including any off-Site administrative support function which is not directly involved in performing the Works and not in the immediate control and direction of the ALT.</i>	[REDACTED]	

<b>Table H</b>			
<b>Costs Payable to the NOPs for Subcontracts</b>			
<b>(exclusive of Affiliated Subcontracts)<sup>3</sup></b>			
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>	
		<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>Design supply and construct</i>	[REDACTED]	
B.	<i>Supply and construct</i>	[REDACTED]	
C.	<i>Construct only</i>	[REDACTED]	
D.	<i>Design only</i>	[REDACTED]	
E.	<i>Supply only</i>	[REDACTED]	
F.	<i>Labour only</i>	[REDACTED]	
G.	<i>Implementation Works Subcontracts</i>	[REDACTED]	
H.	<i>Specialist contractors, including legal advisors engaged for the purposes of making or defending a claim against the Alliance, subject to approval by the ALT</i>	[REDACTED]	
I.	<i>Consultants<sup>4</sup> where specifically approved by the ALT</i>	[REDACTED]	

**Note:** In respect of Affiliated Subcontracts, the provisions of Section 3.7 of this ADA (Sub-Contracting) and Section 5 of this Schedule 4 (Actual Costs) shall apply.

<sup>3</sup> See note immediately below Table H.  
<sup>4</sup> “**Consultants**” means for purposes of this Schedule 4 (Actual Cost) any person who is engaged by the NOP to deliver Works under a services contract which is not a contract of employment.

<b>Table I</b>				
<b>Profit</b>				
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>		
		<b>Profit</b>	<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>Profit / return for the NOP</i>	[REDACTED]		
B.	<i>Affiliate Subcontract Fee (in connection with Affiliated Subcontracts)</i>	[REDACTED]		
C.	<i>Loss of potential profit/return arising from the performance of the Works and the actual recovery of Actual Cost, Overhead and Profit in accordance with this ADA being less than the amount the NOP had anticipated or budgeted on recovering in respect of profit/return at the AD Commencement Date as result of the project, performance and business risks borne by the NOP under or in connection with this ADA</i>	[REDACTED]		
D.	<i>Loss of potential profit/return arising from the performance of the Works and the actual recovery of Actual Cost, Overhead and Profit in accordance with this ADA being less than the amount the NOP could have recovered had it been able to utilize all or part of the resources undertaking the Works to undertake other works or services in the market as result of market forces increasing the potential profit/return on such other works or services and/or reducing the project, performance or business risks to be borne by the NOP in connection with such other works or services</i>	[REDACTED]		
E.	<i>Bonuses or incentive amounts paid to staff and labour which is related to the profitability of the NOP's business (non-Project specific or non-personal objective specific)</i>	[REDACTED]		

## Annex 2 to Schedule 4 (Actual Cost)

### Owner Participant's Actual Cost

#### 1 OWNER PARTICIPANT'S ACTUAL COST

##### 1.1 Principle Categories of Owner Participant's Costs

The principle categories of Owner Participant's costs consists of:

- 1.1.1 Project management costs;
- 1.1.2 Track possession management and compensation costs;
- 1.1.3 Materials, trains and on track machines
- 1.1.4 Utilities; and
- 1.1.5 Permit and approval costs.

##### 1.2 Owner Participant's Actual Cost table

The categories of Owner Participant's Actual Cost are included in the table below. This list is non-exhaustive. Owner Participant's Actual Cost include any other costs and expenses to which this ADA otherwise expressly provides will be an Owner Participant Actual Cost. Any additional costs which are to be included within the scope of Owner Participant's Actual Cost shall be agreed and stated in an approved Estimate, Early Works Proposal or otherwise approved by the ALT.

##### 1.3 Project Management Costs

The salary costs of staff and consultants employed by the Owner and assigned to the AMT and APT for the performance of the Works, as determined by the Owner Participant on the basis of the relevant individual's base salary as established by payroll records and including unproductive time, benefits overhead, managerial overhead, HR corporate overhead, finance corporate overhead, rent usage and workstation usage ("**Owner Participant Rates**").

The Owner Participant will from time to time submit a table of Owner Participant Rates to the ALT for purposes of calculating the Owner Participant's Actual Costs for the Project. The ALT may request the Alliance Auditor to review such Owner Participant Rates and confirm that they generally reflect the cost components noted above or otherwise chargeable by the Owner. Owner Participant Rates shall be updated annually to take account of increases in Owner staffing costs, including inflation and market conditions.

##### 1.4 Track Access and Compensation Costs

Costs, expenses and liabilities (as applicable) incurred by the Owner in respect of the following:

- 1.4.1 Providing additional, adjusted (including overrun track possessions) and/or cancelled track possessions in accordance with a Rail Corridor Access Permit, including, without limitation, required flagging for the Project, train cancellation costs (including, without limitation, ticket refunds), costs associated with trains delays, track interruptions and alternative transportation and including liabilities to Third Parties who operate passenger or freight trains anywhere on the Network;
- 1.4.2 Making alternate arrangements as a result of cancellation of track possessions;



- 1.4.3 Cancellations or alterations to track possessions arising from an act or omission of an AD Participant;
- 1.4.4 Amounts payable, whether in contract, tort or otherwise by the Owner to any Third Party who operates passenger or freight trains anywhere on the Network pursuant to its contractual arrangements with such Third Party, in respect of additional, adjusted (including overrun track possession) and/or cancelled track possessions; and
- 1.4.5 Costs and charges as set forth in any Rail Corridor Access Permit.

**1.5 Materials, Trains and On-Track Machines**

The materials, trains and on-track machines costs consist of specific items that are supplied by Metrolinx on behalf of the Owner Participant rather than being supplied by a NOP. These items their respective rates are to be discussed when preparing any Estimate or Early Works Proposal, having regard to the relevant scope of work and means and methods employed.

<b>Owner Participant's Actual Cost Table</b>				
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>		
		<b>Profit</b>	<b>Actual Cost</b>	<b>Overhead</b>
A.	<i>TTR track/signal TMD support services</i>	[REDACTED]		
B.	<i>Environmental Management Costs</i>	[REDACTED]		
C.	<i>Public Relations/Communications costs specific to the Alliance</i>	[REDACTED]		
D.	<i>Security requirements specific to the Project (e.g. fencing, hoarding, security guards etc.)</i>	[REDACTED]		
E.	<i>Independent Advisors as required by the Alliance and detailed in the VFM Statement</i>	[REDACTED]		
F.	<i>Station operations team costs arising in connection with Works activities</i>	[REDACTED]		
G.	<i>Train timetable and/or station performance modelling arising in connection with the Project</i>	[REDACTED]		
H.	<i>Consent and consultation costs in respect of the Project (e.g. CN, Via Rail, adjacent landowners, etc.)</i>	[REDACTED]		
I.	<i>Insurance costs specific to the Project</i>	[REDACTED]		

<b>Owner Participant's Actual Cost Table</b>				
<b>Ref</b>	<b>Cost Element</b>	<b>Cost Category</b>		
		<b>Profit</b>	<b>Actual Cost</b>	<b>Overhead</b>
J.	<i>The non-recoverable portion of HST (currently [REDACTED]%)</i>	[REDACTED]		
K.	<i>Relevant Owner in-house services specific to the Project and the Works, e.g. Engineering &amp; Design Services, Rail Operations, Legal, Environmental, Risk Management, etc.</i>	[REDACTED]		
L.	<i>Owner staff, consultants and seconded staff (e.g. staff supplied by [REDACTED], [REDACTED], [REDACTED], [REDACTED], etc.) who are engaged in carrying out work on the Project, including Project Controls, design and/or the design approval process, who are detailed on the staff organizational chart approved by the ALT, regardless of whether such personnel are located at a Project Office or some other location approved by the ALT</i>	[REDACTED]		
M.	<i>Cost of Early Works performed after the Commencement Date of the PAA</i>	[REDACTED]		
N.	<i>Utility costs specific to the Project</i>	[REDACTED]		
O.	<i>Permit and approval costs specific to the Project, e.g. site plan review by City of Toronto</i>	[REDACTED]		
P.	<i>Additional Lands</i>	[REDACTED]		

√\* Indicates Owner Participant Rates to be used as a proxy for Actual Cost.

## **SCHEDULE 5 FEE**

### **1 OVERHEAD AND PROFIT**

#### **1.1 Overhead**

The total Overhead payable by the Owner to each NOP under this ADA is as follows:

- (a) for NOP 1: **[REDACTED]**% of the Actual Costs incurred by NOP 1 in self-performing the Services or Early Works; **[REDACTED]**% of the Actual Costs incurred by NOP 1 in performing the Services or Early Works by means of a Subcontract;
- (b) for NOP 2: **[REDACTED]**% of the Actual Costs incurred by NOP 2 in self-performing the Services or Early Works; **[REDACTED]**% of the Actual Costs incurred by NOP 2 in performing the Services or Early Works by means of a Subcontract;
- (c) for NOP 3: **[REDACTED]**% of the Actual Costs incurred by NOP 3 in self-performing the Services or Early Works; **[REDACTED]**% of the Actual Costs incurred by NOP 3 in performing the Services or Early Works by means of a Subcontract; and

#### **1.2 Profit**

The total Profit payable by the Owner to each NOP under this Agreement is as follows:

- (a) for NOP 1: **[REDACTED]**% of the Actual Costs incurred by NOP 1 in self-performing the Services or Early Works; **[REDACTED]**% of the Actual Costs incurred by NOP 1 in performing the Services or Early Works by means of a Subcontract;
- (b) for NOP 2: **[REDACTED]**% of the Actual Costs incurred by NOP 2 in self-performing the Services or Early Works; **[REDACTED]**% of the Actual Costs incurred by NOP 2 in performing the Services or Early Works by means of a Subcontract; and
- (c) for NOP 3: **[REDACTED]**% of the Actual Costs incurred by NOP 3 in self-performing the Services or Early Works; **[REDACTED]**% of the Actual Costs incurred by NOP 3 in performing the Services or Early Works by means of a Subcontract.

#### **1.3 Overhead and Profit as a mark-up**

Overhead and Profit is a mark-up on the NOP's Actual Costs reasonably and actually incurred by the NOP in performing the Services or Early Works, whether by way of self-performing the Services or Early Works or by way of Subcontract.

#### **1.4 Percentage is not adjusted**

The percentage figures specified above will apply for the duration of the AD Phase and will not be adjusted, split, modified or altered in any way for any reason or purpose including for the purpose of recognizing that each NOP may have a different internal percentage figure that is normally applied in other contracting arrangements.

#### **1.5 Payment Procedure**

The procedure for payment is set out in Schedule 12 (Payment Procedures).

1.6 **Overhead is inclusive of all overhead costs**

The NOPs agree that Overhead is, unless the Agreement expressly provides to the contrary, inclusive of all overhead costs.

## **SCHEDULE 6 ALLIANCE TEAM PROTOCOLS**

The AD Participants agree to observe the following protocols during the AD Phase:

### **1** Obligations:

The AD Participants agree at all times to:

- 1.1 ensure that only suitably qualified and experienced employees, contractors and consultants work on the provision of the Works;
- 1.2 exercise Diligence in the performance of the Works and their other obligations under this ADA;
- 1.3 ensure that the Works and the Project Proposal are suitable to address the requirements of this ADA;
- 1.4 develop the Project Proposal in accordance with the requirements and formats set out in this ADA; and
- 1.5 develop the Project Proposal taking into account all of Section 1.1 to 1.4 (inclusive) and all other requirements of this ADA and the VFM Statement.

### **2** Acknowledgments:

The AD Participants acknowledge that the Owner has nominated the ALT to:

- 2.1 co-ordinate and administer the AD Phase up to the execution of the Project Alliance Agreement;
- 2.2 provide documents and information to the AMT to assist them in performing the Works;
- 2.3 participate in the various activities to be performed in the AD Phase as set out in this ADA; and
- 2.4 provide feedback to the Owner to assist in the consideration and evaluation of the Project Proposal.

### **3** Warranties:

The AD Participants warrant that they will:

- 3.1 exercise proper professional skill, care and Diligence in the development of all aspects of the Project Proposal, and that they will ensure that their representatives, employees, contractors and consultants are so qualified and experienced and exercise Diligence;
- 3.2 examine and verify the VFM Statement to the extent necessary for the preparation and submission of the Project Proposal;
- 3.3 prepare a Project Proposal that they honestly and genuinely believe will achieve the VFM Statement;

- 3.4 develop the Project Proposal on the principles that the Target Outturn Cost will be developed applying first principles elemental estimating procedures utilizing a structure that has been agreed with the Owner and in accordance with this ADA;
- 3.5 ensure that all efforts by the AD Participants will be open, transparent and collaborative;
- 3.6 ensure that all technical solutions will be robust and will satisfy the requirements of the VFM Statement;
- 3.7 ensure to the extent possible, all estimates of production rates, plant, equipment, materials and subcontract procurement costs will be validated by competitive market testing, or will otherwise be established by benchmarking to current industry best practice;
- 3.8 ensure that all innovations and technical solutions identified by the AD Participants in developing the Project Proposal will be incorporated into the Project Proposal and considered in determining the relevant Risk and Contingency Provision;
- 3.9 ensure that there will be a genuine commitment to innovation and continuous improvement in the development of the Project Proposal and to satisfying the requirements of the VFM Statement; and
- 3.10 ensure that the Works will be performed in accordance with this ADA.

#### 4 Commitments of AD Participants:

The AD Participants commit to:

- 4.1 fully co-operate with and assist the ALT, the AMT and advisors to ensure that they are able to effectively and expeditiously carry out their duties;
- 4.2 jointly developing the Project Proposal and Target Outturn Cost with the ALT and optimizing the VFM Statement requirements on a Best For Project basis;
- 4.3 working with the ALT in the administration of this ADA so as to avoid any unwarranted and unapproved expenditures and to abide by the instructions issued to them by the Owner's Representative or the ALT for the execution of the Works;
- 4.4 having an "open book" approach in preparing the Target Outturn Cost, meaning that the Owner can have access to all records, information and data in the possession of the NOPs which in any way has a bearing on the Target Outturn Cost. This aspect of the open book philosophy must be carried forward by the NOPs into all aspects of costing and accounting;
- 4.5 provide the Owner's independent advisors with full access to all records and the basis of all of the methodology, approaches, assumptions, quantities, rates, amounts, estimations and contingencies referred to above during the investigations and the preparation of the Target Outturn Cost;
- 4.6 honestly and openly answering any questions the Owner's independent advisors, the Owner's Representative and the Owner may have in connection with the Project Proposal (including the Target Outturn Cost);
- 4.7 having regard to and taking into account any comments or requirements of the Owner or its advisors on the Project Proposal and to making such adjustments and changes as may be necessary;

- 4.8 conduct a collaborative behavioral assessment in respect of each nominee to the AMT prior to their appointment and share that assessment with the Alliance Director and ALT on a confidential basis; and
- 4.9 ensure, to the extent reasonably possible, that at all times there will be proportional representation on the AMT and APT from each AD Participant.

## **SCHEDULE 7 COMPLETION DOCUMENTS**

In this Schedule 7, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

### **1 Documents to be delivered by the NOP**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than the Owner and in form and substance satisfactory to the Owner’s Representative, acting reasonably) is to be delivered by each NOP as applicable, to the Owner’s Representative on or prior to the Commencement Date (as such term is defined in the Project Alliance Agreement):

- 1.1 an original of the Project Alliance Agreement;
- 1.2 an original of the parent company guarantee of each NOP as required pursuant to Section 42 of the PAA;
- 1.3 a certificate of insurance and, to the extent required by the Owner, draft policies of insurance for the insurances required to be taken out by the NOP in accordance with the Project Alliance Agreement;
- 1.4 original Bonds required in accordance with the Project Alliance Agreement;
- 1.5 an original of the undertaking and acknowledgment in the form attached as Appendix A to this Schedule 7;
- 1.6 a certificate of an officer of each NOP substantially in the form attached as Appendix B to this Schedule 7;
- 1.7 a certificate of an officer of the parent company that is providing the parent company guarantee required pursuant to the Project Alliance Agreement, substantially in the form attached as Appendix B to this Schedule 7;
- 1.8 an original of the opinion from counsel to each NOP, the parent company that is providing the parent company guarantee required pursuant to the Project Alliance Agreement, and such other NOP Parties as the Owner may reasonably require substantially in the form attached as Appendix C to this Schedule 7 and otherwise acceptable to the Owner and its counsel;
- 1.9 evidence that the COR-Certified Construction NOP Party has its COR Certification in good standing (or to the extent that the COR-Qualified Construction NOP Party does not have its COR Certification by the Commencement Date, evidence that the COR-Qualified Construction NOP Party has its current OHSAS 18001 Accreditation in good standing and has made an application to IHSA for its COR Certification);
- 1.10 in respect of the Construction NOP (and where the Construction NOP is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a WSIB clearance certificate, or if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, current to the Commencement Date;



- 1.11 in respect of the Construction NOP (and where the Construction NOP is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a CAD-7, or, if a CAD-7 is not available, equivalent documentation from another jurisdiction, current to the Commencement Date;
- 1.12 in respect of the Construction NOP (and where the Construction NOP is a partnership or joint venture, in respect of each partner of the partnership or member of the joint venture, as applicable), a Workplace Injury Summary Report (“WISR”) or, if a WISR is not available, equivalent documentation from another jurisdiction, current to the Commencement Date;
- 1.13 written confirmation that the list of Key Individuals identified in the proposal submitted as part of the RFP Proposal Technical Submission, is unchanged; and
- 1.14 such other documents as the Parties may agree, each acting reasonably.

**2 Documents to be delivered by the Owner**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where IO or Metrolinx is a party to such document, executed by IO or Metrolinx and, if applicable, any Owner Party or Governmental Authority) is to be delivered by the Owner’s Representative to the NOPs on or prior to the Commencement Date:

- 2.1 an original of the Project Alliance Agreement;
- 2.2 a certificate of an officer of IO and a declaration of management signed by an officer of IO substantially in the forms attached as Appendix D-1 and Appendix E respectively to this Schedule 7;
- 2.3 a certificate of an officer of Metrolinx signed by an officer of Metrolinx substantially in the form attached as Appendix D-2 to this Schedule 7; and
- 2.4 such other documents as the Parties may agree, each acting reasonably.

## APPENDIX A

### FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

**TO:** **ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act*, 2011

**TO:** **Metrolinx**, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 (“**Metrolinx**”) collectively, (the “**Owner**”)

**AND TO:** **The Minister of Infrastructure** (the “**Minister**”)

**RE:** Project alliance agreement (as amended, supplemented or modified from time to time, the “**Project Alliance Agreement**”) dated the [•] day of [•], 20[•] between the Owner and [•],[•] (the “**NOPs**”)

---

1. The undersigned acknowledges that:
  - (a) The Project will proceed as a public-private partnership project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles which guide the financing and procurement of public infrastructure projects in Ontario.
  - (b) The five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
    - (i) The public interest is paramount.
    - (ii) Value for money must be demonstrable.
    - (iii) Appropriate public control/ownership must be preserved.
    - (iv) Accountability must be maintained.
    - (v) All processes must be fair, transparent and efficient.
  - (c) Consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
2. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Alliance Agreement.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 20[•].

**[NOP]**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

## APPENDIX B

### FORM OF NOP/NOP PARTY/PARENT COMPANY GUARANTOR OFFICER'S CERTIFICATE

#### Certificate of an Officer of

[•]

(the "Corporation")

**TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO**  
**AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION AND METROLINX**  
**(collectively, the "Owner")**  
**AND TO: THE MINISTER OF INFRASTRUCTURE**

I, [•], being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constatting Documents

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of the **[Province of Ontario]**.
- (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
- (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the date hereof. The Unanimous Shareholders' Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [•] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes,

additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.

- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the Business Corporations Act (Ontario) (the "Act"), the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
  - (i) restrict or limit the powers of the Corporation to enter into:
    - (1) a certain project alliance agreement with the Owner made as of [•], 20[•] (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Alliance Agreement**") pursuant to which the Corporation will, among other things, design and build the Project; and
    - (2) **[Note to Proponents: List other documents delivered at Close.]** (collectively, the "**Documents**"); or
  - (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

## 2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule "D"** are true and complete copies of the resolutions of the **[directors/shareholders]** of the Corporation (the "**Resolutions**"), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.

- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Articles, By-laws or the Unanimous Shareholders' Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there are no actions, suits, proceedings, or investigations pending or threatened in writing against the Corporation at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the Corporation has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Corporation or in any impairment of its ability to perform its obligations under the Documents, and the Corporation has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario Governmental Authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

3. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders' Agreement or under any other agreement binding on the Corporation.

4. Specimen Signatures

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE
[.]		
[.]		
[.]		
[.]		

## APPENDIX C

### FORM OF NOP/NOP PARTY/PARENT COMPANY GUARANTOR OPINION

[INSERT DATE]

Ontario Infrastructure and Lands Corporation  
Suite 2400, 1 Dundas Street West  
Toronto, ON  
M5G 1Z3

Metrolinx  
[•]

Norton Rose Fulbright Canada LLP  
222 Bay Street, Suite 3000, P.O. Box 53  
Toronto, ON  
M5K 1E7

Dear Sirs/Mesdames:

**Re: Regional Express Rail – Union Station Enhancement Project**

---

We have acted as counsel to [•] (the “**NOP**”) and [•] (the “**Parent Company Guarantor**”) in connection with the transaction whereby the NOP has agreed to enter into a project alliance for GO Expansion – Union Station Enhancement Project.

***[Note to Proponents: Additional parties to be added depending on the NOPs structure]***

This opinion is being delivered to Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act*, 2011, as agent for Her Majesty the Queen in right of Ontario and Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48 (collectively, the “**Owner**”) and its counsel pursuant to Section 1 of Schedule 7 (Completion Documents) to the Alliance Development Agreement and in respect of the project alliance agreement made as of [•], 20[•] between the Owner and, inter alia, the NOP (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Alliance Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Alliance Agreement.

In our capacity as counsel to the NOP and the Parent Company Guarantor, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [•], 20[•]):

1. the Project Alliance Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
  - (a) the Performance Bond;
  - (b) the Multiple Obligee Rider to the Performance Bond;
  - (c) the Labour and Material Payment Bond;

- (d) the Multiple Obligee Rider to the Labour and Material Payment Bond; and
- (e) the parent company guarantee of the Parent Company Guarantor.

***[Note to Proponents: List other documents delivered at the date of the Project Alliance Agreement.]***

The Project Alliance Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”.

***[Note to Proponents: Additional documents to be added depending on the NOPs structure.]***

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to **[the NOP or the Parent Company Guarantor]**, nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of the NOP and the Parent Company Guarantor dated as of the date hereof (the “**Officer’s Certificates**”) as to certain factual matters.

**Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of the NOP and the Parent Company Guarantor (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer’s Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer’s Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1 and 2 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule “B”.

**Assumptions**

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than the NOP and the Parent Company Guarantor) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited



partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.

3. Each of the parties (other than the NOP and the Parent Company Guarantor) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.

#### Opinions

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

#### *Incorporation and Existence*

1. The NOP is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Parent Company Guarantor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

#### *Corporate Power and Capacity*

3. The NOP has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
4. The Parent Company Guarantor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

#### *Corporate Authorization*

5. The NOP has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
6. The Parent Company Guarantor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

#### *Execution and Delivery*

7. The NOP has duly executed and delivered each of the Documents to which it is a party.

8. The Parent Company Guarantor has duly executed and delivered each of the Documents to which it is a party.

#### *Enforceability*

9. Each of the Documents to which the NOP is a party constitutes a legal, valid and binding obligation of the NOP, enforceable against it in accordance with its terms.
10. Each of the Documents to which the Parent Company Guarantor is a party constitutes a legal, valid and binding obligation of the Parent Company Guarantor, enforceable against it in accordance with its terms.

#### *No Breach or Default*

11. The execution and delivery by the NOP of each of the Documents to which it is a party does not, and the performance by the NOP of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or any unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the NOP is subject.
12. The execution and delivery by the Parent Company Guarantor of each of the Documents to which it is a party does not, and the performance by the Parent Company Guarantor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or any unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Parent Company Guarantor is subject.

#### *Regulatory Approvals*

13. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the NOP of the Documents to which it is a party and the performance of its obligations thereunder.
14. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Parent Company Guarantor of the Documents to which it is a party and the performance of its obligations thereunder.

#### **Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the Limitations Act, 2002 (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.

4. Pursuant to the Currency Act (Canada), a judgment in money rendered by a court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a court as being solely the agent of the NOP notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the Arbitration Act, 1991 (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which even an arbitration under such arbitration provisions may not be commenced or continued. In addition, the Arbitration Act, 1991 (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on the Owner for which it would be contrary to public policy to require the NOP to indemnify the Owner or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

APPENDIX D-1

FORM OF CERTIFICATE OF AN OFFICER OF ONTARIO INFRASTRUCTURE AND LANDS CORPORATION (the "Corporation")

**TO:** [THE NOPs]  
**AND TO:** [COUNSEL TO THE NOPs]  
**RE:** Project Alliance Agreement (as amended, supplemented or modified from time to time, the "**Project Alliance Agreement**") dated the [Insert Date] between the Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act*, 2011; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48; and [•], [•], [•] (collectively, the "**NOPs**")

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I, [•], the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Attached hereto as **Schedule "A"** is a true and complete copy of (i) the resolutions of the directors of the Corporation regarding the execution of public works projects undertaken by the Corporation and certain other matters set forth therein; and (ii) an excerpt of the resolutions of the directors of the Corporation relating to delegation of signing authority (collectively, the "**Execution Resolutions**"), which have been duly and validly passed in accordance with applicable law. The Execution Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
2. Attached hereto as **Schedule "B"** is a true and complete copy of the resolutions of the directors of the Corporation approving the selection of the NOPs as the successful bidders for the GO Expansion – Union Station Enhancement Project (the "**Project Resolutions**"). The Project Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same is in full force and effect, unamended as of the date hereof.
3. To the knowledge of the undersigned, after due inquiry as of the date hereof, the Minister of Infrastructure (the "**Minister**") has not given a direction pursuant to subsection 4(3) of the *Ontario Infrastructure and Lands Corporation Act*, 2011, S.O. 2011, c. 9, Schedule 32, as amended (the "**Act**") that limits the scope of the objects of the Corporation as they are set out in subsection 4(1) of the Act.
4. The following named persons, on or as of the date hereof, are duly elected or appointed officers of the Corporation, as evidenced by the holding of the office or offices set forth opposite their names, are proper signing officers of the Corporation and are authorized to execute and deliver Project Documents (as such a term is defined in the Execution Resolutions referenced in item 1(i) above) relating to the GO Expansion – Union Station Enhancement Project on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons.

Name	Position	Signature
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[•]

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[•]

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DATED this \_\_\_\_ day of \_\_\_\_\_, 20[•].

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Name: [•]  
Title: [•]

APPENDIX D-2

FORM OF CERTIFICATE OF AN OFFICER OF METROLINX (the "Corporation")

TO: [THE NOPs]

AND TO: [COUNSEL TO THE NOPs]

RE: Project Alliance Agreement (as amended, supplemented or modified from time to time, the "**Project Alliance Agreement**") dated the [Insert Date] between the Corporation, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act*, R.S.O. 1990, c. 48; Ontario Infrastructure and Lands Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*; and [•], [•], [•] (collectively, the "**NOPs**")

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I, \_\_\_\_\_, the \_\_\_\_\_ of the Corporation and an authorized signatory of the Corporation hereby certify and confirm for and on behalf of the Corporation and without incurring personal liability that:

1. the addressees may rely on the certifications and confirmations set for the below without further inquiry;
2. attached hereto as Schedule "A" is a true and complete copy of a Resolution of the Board of Directors of the Corporation passed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "**Resolution**") authorizing Metrolinx to enter into the Project Alliance Agreement and all necessary legal agreements that may be required to give effect to it on terms and conditions and in form satisfactory to the Executive Vice President of Metrolinx and authorizing the signing officers of Metrolinx to execute the Project Alliance Agreement and all necessary legal agreements and related documentation to give effect to the Resolution; and
3. the Resolution has been duly and validly passed and is in full force and effect and has not been superseded or amended as of the date hereof.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20•.

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Name:

Title:

## APPENDIX E

### FORM OF DECLARATION OF MANAGEMENT

#### ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

(the “Corporation”)

#### DECLARATION OF MANAGEMENT

**WHEREAS** the Corporation, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*; Metrolinx, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c. 16 and a Crown agency in accordance with the *Crown Agency Act, R.S.O. 1990*, c. 48; and [•] propose to enter into a Project Alliance Agreement relating to the GO Expansion – Union Station Enhancement Project in Toronto, Ontario (the “**Project**”);

**AND WHEREAS** the Corporation will from time to time enter into agreements for the design, construction and/or facilities management of the Project assigned to the Corporation by the Minister of Infrastructure and as well as ancillary agreements, instruments, certificates and other documents required to give effect to, or contemplated to be delivered in accordance with the Project (collectively, “**Project Documents**”);

#### **NOW THEREFORE THE CORPORATION’S MANAGEMENT HEREBY DECLARES THAT:**

1. by resolution of the board of directors of the Corporation passed on [•], the board of directors of the Corporation has authorized the Corporation’s management (for and in the name of and on behalf of the Corporation) to execute and deliver the Project Documents and do all such other acts and things as the Corporation’s management may determine to be necessary or advisable to carry out the transactions contemplated by the applicable Project Documents;
2. the Corporation’s management may execute and deliver the Project Documents to which the Corporation may become a party and any other documents, instruments or agreements delivered in connection with the Project Documents from time to time (collectively, together with the Project Documents, the “**Documents**”) all in such form and on such terms as the management of the Corporation executing such Documents in accordance with this declaration may approve, such approval to be evidenced conclusively by the execution of such Documents by the Corporation’s management; and
3. the Project Documents to be executed and delivered by the Corporation in connection with the Project and the transactions and obligations contemplated thereunder are for the purpose of carrying out the objects of the Corporation and the Corporation shall not and will not assert the contrary against any person dealing with the Corporation or any person who has acquired an interest in the Project from the Corporation.



**THIS DECLARATION** may be signed in counterparts, and all such counterparts, when taken together, shall constitute one and the same declaration, effective on this date.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20[•].

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Name: [•]

Title: [•]

## **SCHEDULE 8 TARGET OUTTURN COST**

### **1** Determination of the Target Outturn Cost

- 1.1 The Target Outturn Cost must be determined by the AD Participants in accordance with Section 12.1 (subject to approval by the Owner's Representative) as being the aggregate of the:
  - 1.1.1 estimate of the Actual Costs for each NOP determined in accordance with Section 2 of this Schedule 8 (Target Outturn Cost);
  - 1.1.2 estimate of the Actual Costs for the Owner Participant, including any Owner costs expressly stated to be an Owner Participant Actual Cost in the PAA;
  - 1.1.3 Fee determined in accordance with Section 3; and
  - 1.1.4 Risk and Contingency Provision for all the Participants determined in accordance with Section 4.

### **2** Determination of Actual Costs for each NOP

- 2.1 The estimate of the Actual Costs to be incurred by each NOP must be determined in accordance with Sections 2.2 and 2.3 of this Schedule 8 (Target Outturn Cost) and developed in accordance with the Canadian Institute of Quantity Surveyor (CIQS) method of measurement or Elemental method.
- 2.2 In determining the estimate of the Actual Costs for each NOP, the AD Participants must:
  - 2.2.1 apply first principles estimating procedures utilizing a pricing structure that has been approved by the ALT to determine the reasonable and realistic level of resources, rates and prices required to make that adjustment; and
  - 2.2.2 benchmark any proposed Actual Costs against all relevant Resource Unit Rates and Composite Rates in the Pricing Document (adjusted where appropriate including for indexation) to demonstrate that, so far as practicable in the circumstances, the proposed Actual Cost is not materially inconsistent with the Pricing Document.
- 2.3 The component of the Actual Costs relating to any work or services to be provided by the Owner Participant under the Project Alliance Agreement must be included within the build-up of the overall Target Outturn Cost stated in the Project Proposal.
- 2.4 For the avoidance of doubt, such component of Actual Costs relating to the Owner Participant is:
  - 2.4.1 disregarded in calculating any Fee;
  - 2.4.2 included within the Target Outturn Cost; and
  - 2.4.3 by virtue of its inclusion within the Target Outturn Cost, taken into account in determining the Risk and Contingency Provision.
  - 2.4.4 Any Actualized Rates for Staff and/or Site Labour used in determining Actual Cost (determined in accordance with Section 7 of Schedule 4 (Actual Cost))

must include the relevant elements of Actual Cost of Staff and/or Site Labour to ensure that the Actual Cost is a true pre-estimate of the likely Actual Costs to be incurred.

### 3 Determination of Fee

- 3.1 The AD Participants and the ALT must use the percentages for Overhead and Profit set forth in Schedule 5 (Fee), subject to any downward adjustment set forth in the Project Proposal, to determine the Overhead and Profit components of the Target Outturn Cost.
- 3.2 The Fee is the aggregate of Overhead and Profit payable under the Project Alliance Agreement based on the Actual Costs assumed to be payable to each NOP in accordance with Section 3.4 of this Schedule 8 (Target Outturn Cost)
- 3.3 Schedule 5 (Fee) sets out the tendered percentages for Overhead and Profit for each NOP for both self-performed Works and for subcontracted Works which are to be used to determine the Overhead and Profit for each NOP.
- 3.4 In order to determine each NOP's Overhead and Profit, the percentages in Schedule 5 (Fee) for the relevant NOP must be applied to the Actual Costs applicable to the part of the Works to be carried out by the relevant NOP under the Project Alliance Agreement, provided that:
  - 3.4.1 for the part of the Works to be carried out by the relevant NOP as a Participant (self-performed) or by any of its or their Subcontractors, as such term is defined in the Project Alliance Agreement (subcontracted) the relevant percentages rates stated in Schedule 5 (Fee) will apply; and
  - 3.4.2 the relevant percentages for Profit relating to any NOP as a Participant must be applied only to the relevant Actual Cost and must not be applied to any Overhead relating to that NOP as a Participant.

### 4 Determination of Risk and Contingency Provision

- 4.1 To determine the Risk and Contingency Provision, in preparing the Project Proposal the AD Participants and the ALT must:
  - 4.1.1 compile a risk schedule of all contemplated Alliance Risks;
  - 4.1.2 apply a "three point" estimate to each identified Alliance Risk;
  - 4.1.3 apply a "three point" assessment of probability for each Alliance Risk; and
  - 4.1.4 carry out a QCRA at **[REDACTED]**% and **[REDACTED]**% probability values.
- 4.2 The value of the QCRA at **[REDACTED]**% probability must be used by the AD Participants and the ALT to determine the Risk and Contingency Provision within the Target Outturn Cost.

### 5 Owner's Discretion

- 5.1 The provisions of this Schedule 8 (Target Outturn Cost) are without prejudice to and do not fetter in any way the Owner's right of election at Section 15.2 of this ADA notwithstanding the participation of the Owner Participant in the determination of the Target Outturn Cost or the submission of any Project Proposal containing a proposed Target Outturn Cost or

any omission, instruction, comment, acknowledgement, approval or agreement and the like by the Owner Participant, the Owner's Representative and/or the ALT, in relation to a proposed Target Outturn Cost or the Project Proposal.

## **6** Owner Participant's Costs

6.1 For the avoidance of doubt, Owner Participant's Actual Costs may form part of the:

6.1.1 Target Outturn Cost; or

6.1.2 Risk and Contingency Provision, all as set out in the Project Proposal.

6.2 In determining under this Schedule 8 (Target Outturn Cost) (as the case may be) any:

6.2.1 Actual Cost;

6.2.2 Risk and Contingency Provision; and/or

6.2.3 Target Outturn Cost,

the scope of the Owner Participant's role and the determination of the Owner Participant's Actual Costs shall be as set out the relevant Request for Estimate and/or as may be notified during the development of the Project Proposal.

6.3 The scope of the Owner Participant's role and the method of determination of the related Owner Participant's Actual Costs shall be set out in the Project Proposal.

## **SCHEDULE 9 INSURANCE POLICIES AND BONDS**

- 1** Insurance policies to be effected and maintained by the Owner
- 1.1 From commencement of the AD Phase the Owner will obtain and maintain the following insurance exclusively through the Metrolinx Construction Insurance Program (“**OCIP**”):
- 1.1.1 Project Specific Professional Insurance as outlined in A4 of Appendix A; and
- 1.1.2 Project Specific Pollution Liability as outlined in A3 of Appendix A.
- The insurance required under this Section 1.1 of this Schedule 9 (Insurance Policies and Bonds) shall come into effect on the ADA Commencement Date and continue until the Date of Completion of the Works plus 36 months extended reporting period, as specified in Appendix A of this Schedule 9.
- 1.2 If during the AD Phase any Early Works are anticipated, the Owner will procure the following additional insurance:
- 1.2.1 “All Risks” Course of Construction, including Boiler and Machinery as outlined in A1 of Appendix A; and
- 1.2.2 “Wrap Up Liability”, Commercial General Liability and Non-Owned Automobile Liability; as outlined in A2 of Appendix A.
- The insurance required under this Section 1.2 of this Schedule 9 (Insurance Policies and Bonds) shall come into effect at the commencement of the Early Works and continue until (i) in respect of “All Risks” Course of Construction, including Boiler and Machinery insurance, the Date of Completion of the Works plus 24 months extended maintenance, as specified in Appendix A of this Schedule 9; and (ii) in respect of “Wrap Up Liability”, Commercial General Liability and Non-Owned Automobile Liability insurance, the Date of Completion of the Works plus 36 months completed operations, as specified in Appendix A of this Schedule 9.
- 1.3 Insurance of the Owner's Property
- 1.3.1 The Owner may obtain and maintain, in its sole and absolute discretion, a policy or policies of insurance in respect of loss or damage to property of the Owner arising out of or in connection with the Services or Early Works, and business interruption costs consequent upon such loss or damage.
- 1.3.2 The insurance set forth under this Section 1.3 of this Schedule 9 (Insurance Policies and Bonds), if obtained, will come into effect on the date of commencement of the Services or Early Works and continue until the end of the AD Phase. Notwithstanding the foregoing, the Owner may terminate such insurance coverage at any time during such period.
- 1.3.3 The costs of the insurance set forth in this Section 1.3 of this Schedule 9 (Insurance Policies and Bonds) will not be treated as Owner Participant Actual Costs under this ADA.
- 1.4 All insurance provided shall be primary with respect to any similar coverage provided by any insurance obtained by or available to Participants without any right of contribution of any insurance carried by the other Participants.

## 2 Insurance policies to be effected and maintained by each NOP

- 2.1 From commencement of the AD Phase, each Participant will effect and maintain the following insurance:
  - 2.1.1 Commercial/Comprehensive General Liability and Non-Owned Automobile Liability insurance as outlined in B2 of Appendix B.
  - 2.1.2 Automobile Liability on a Standard Ontario Owners Form as outlined in B1 of Appendix B; and
  - 2.1.3 Any other insurance required by Applicable Law, including but not limited to WSIB as outlined in B5 of Appendix B.
- 2.2 If during the AD Phase any Early Work are anticipated each NOP shall, and shall cause its Subcontractors to, procure the following additional insurance:
  - 2.2.1 "All Risks" Marine Cargo (if any exposure) as outlined in B3 of Appendix B; and
  - 2.2.2 "All Risks" Contractors' Equipment (if any exposure) as outlined in B4 of Appendix B.
- 2.3 The insurance coverage obtained by each of the NOPs pursuant to this Section 2 shall comply with the requirements set out in Appendix B and shall be subject to approval by the Owner, which approval will not be unreasonably withheld.
- 2.4 The Parties must comply with the project insurance manual that shall be issued by the Owner, as may be amended or re-issued by the Owner from time to time, unless the ALT agrees otherwise.
- 2.5 All policies of insurance outlined in this Schedule 9 (Insurance Policies and Bonds) must be issued by an insurer with a financial strength rating of not lower than S&P "A-" or AM Best A.
- 2.6 To achieve the minimum limits for any types of insurance required under Appendix A and Appendix B of this Schedule 9 (Insurance Policies and Bonds), it is permissible to arrange the insurance under a single policy or by a combination of primary, umbrella and/or excess policies.

## 3 Surety Bonds

- 3.1 Any NOP performing Early Works shall obtain and deliver to the Owner originally executed Bonds in accordance with the requirements agreed by the ALT and in accordance with the requirements of the Construction Act on the dates specified by the ALT. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, the NOP is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to the Owner to evidence the authority of the agent or the attorney in fact.
- 3.2 Such Bonds shall be issued by an insurer duly licensed under the *Insurance Act* (Ontario) to write surety and fidelity insurance in the Province of Ontario and shall be maintained in good standing until the fulfillment of the Agreement.
- 3.3 Such Bonds shall include:

- 3.3.1 a Labour and Material Payment Bond in accordance with the requirements of the Construction Act; and
- 3.3.2 a Performance Bond in accordance with the requirements of the Construction Act,

with the amount of each Bond being determined by the ALT on a Best for Project basis.

**APPENDIX A  
OWNER INSURANCE REQUIREMENTS**

**Works Insurance – Union Station Enhancement Project**

**Insurances to be provided, or caused to be provided, by the Owner through the Metrolinx Construction Insurance Program (“OCIP”)**

Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible	Principal Cover
<b>Appendix A - Insurance 1 (A1)</b> <b>“All Risks” Course of Construction Including Boiler and Machinery</b>	<p>Value declared including Soft Costs representing [REDACTED]% of Recurring / Continuing Soft Costs) to be equal to the estimated completed project value of the Works, including Property of Every Description and all other property supplied by Owner or Owner Parties for incorporation into the Works. For clarity, this does not include any existing assets on the Lands or any Additional Lands.</p> <p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery) Extended Maintenance 24 months</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Transit</li> <li>• Unnamed locations</li> <li>• Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit)</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> </ul>	Commencement of Early Works to date of Completion plus 24 months Extended Maintenance	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>[\$REDACTED] Flood</p> <p>[\$REDACTED] Testing and Commissioning</p> <p>[\$REDACTED] LEG 3</p> <p>[\$REDACTED] Extended Maintenance</p> <p>[\$REDACTED] All other losses</p> <p>30 day waiting period for Soft Costs</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	“All Risks” Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Soft Costs, with no early occupancy restriction. Plus 24 months Extended Maintenance.



Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible	Principal Cover
	<ul style="list-style-type: none"> <li>Off Premises Services (\$[REDACTED] sub-limit)</li> <li>Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> </ul>			
	<ul style="list-style-type: none"> <li>Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical equipment and subject to a \$[REDACTED] sub-limit)</li> <li>Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>Civil Authority Access Interruption (8 weeks)</li> <li>Prevention of Ingress/Egress (8 weeks)</li> <li>Permission for Partial Occupancy prior to date of Completion</li> <li></li> <li>Margin of Profit Extension for Contractors</li> <li>Testing and Commissioning (120 day limitation each component)</li> <li>Sanctions Clause</li> </ul>			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>Cyber risk</li> <li>Mould, fungi and fungal derivatives</li> <li>Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum LEG 3 standard</li> <li>War risk</li> <li>Terrorism</li> <li>Nuclear or radioactive contamination, except re radioactive isotopes intended for</li> </ul>			

Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible	Principal Cover
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- scientific, medical, industrial or commercial use
- Contractors' equipment

<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes NOPs, the Owner, all other parties engaged in the Works or with an insurable interest or required to be Named, Additional Named and/or Additional insured by contract or agreement including but not limited to subcontractors, sub-subcontractors, consultants, sub-consultants, as their respective interests may appear</li> <li>No provision permitted allowing a coinsurance penalty</li> <li>Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Policy to be non-cancellable except for premium non-payment, material change to the risk, abandonment material misrepresentation or concealment of facts, or a material breach of any condition of the policy. Policy cancellable at anytime by the Owner subject to minimum retained premium</li> <li>Additional key extensions of coverage:</li> </ul>
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Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible	Principal Cover
				<ul style="list-style-type: none"> <li>- Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the Project</li> <li>- Waiver of subrogation against all Named, Additional Named and Additional Insureds , including but not limited to NOPs, NOP Parties, Owner, Owner Participant, Owner Parties subcontractors, professional consultants (other than for their professional consulting risk), as well as officers, directors and employees, servants, and agents of the foregoing where required by contract or agreement.</li> <li>- Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>- Liberalization Clause</li> <li>- Errors and Omissions</li> <li>- Breach of Conditions</li> </ul>

**Works Insurance – Union Station Enhancement Project**

Insurances to be provided, or caused to be provided, by the Owner through the Metrolinx Construction Insurance Program (“OCIP”)

Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible(s)	Principal Cover
<p><b>Appendix A - Insurance 2 (A2)</b>  <b>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability</b></p>	<p>§[REDACTED] each occurrence, and in the aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• §[REDACTED] Non-Owned Automobile Liability</li> <li>• §[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• §[REDACTED] “All Risks” Tenants’ Legal Liability</li> <li>• §[REDACTED] Prairie or Forest Fire Fighting Expenses</li> <li>• §[REDACTED] Employee Benefits Administrative Errors and Omissions</li> <li>• §[REDACTED] Contractors Rework</li> <li>• §[REDACTED] Legal Liability for Damages To hired Automobiles (SEF 94)</li> <li>• §[REDACTED] /§[REDACTED] Medical Payments</li> </ul> <p>Major Extensions:</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as applicable</li> <li>• Elevator and Hoist Collision Liability</li> </ul>	<p>Commencement of Early Works to date of Completion plus 36 months Completed Operations</p>	<p>For all Work, except as noted below:</p> <p>§[REDACTED] per occurrence</p> <p>§[REDACTED] per claim with respect to Contractors Rework</p> <p>§[REDACTED] per claim with respect to each SEF 94, Tenants’ Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</p>	<p>“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 36 months, effective from the date of Completion.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours’ notice coverage structure).</p>

Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible(s)	Principal Cover
	<ul style="list-style-type: none"> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified</li> <li>• Non-Owned Automobile Liability</li> <li>• Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub-limit</li> <li>• Non-Owned Automobile Liability Policy (SPF#6)</li> <li>• Contractual Liability (SPF#96)</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> <li>• Breach of Conditions</li> </ul> <p>Major Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, at the Lands and any Additional Lands</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> </ul>			

Type (Occurrence)	Amount	Period of Insurance	Maximum Deductible(s)	Principal Cover
	<ul style="list-style-type: none"> <li>Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>Asbestos</li> <li>Sanctions Clause</li> </ul>			
<i>Comments</i>				<ul style="list-style-type: none"> <li>Named Insured includes NOPs, Owner, and all other parties engaged in the Works or with an insurable interest or required to be noted as a Named, Additional Named or Additional insured by contract or agreement including but not limited to subcontractors, sub-subcontractors, suppliers while working on the Lands or any Additional Lands, tradesmen while working on the Lands or any Additional Lands, engineers, architects, consultants and sub-consultants, (other than for professional liability),</li> <li>Others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Lands or any Additional Lands</li> <li>Railway Companies as Additional Insured as required</li> <li>Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Pollution and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>Waiver of subrogation of insurers' rights of recovery, against all Named, Additional Named and/or Additional Insureds, as well as officers, directors, employees, servants and agents of the foregoing where required by contract or agreement</li> <li>Policy to be non-cancellable except for premium non-payment, , material change to the risk ,abandonment ,material misrepresentation or concealment of facts, or a material breach of any condition of the policy. Policy cancellable at anytime by the Owner subject to minimum retained premium</li> </ul>

**Works Insurance – Union Station Enhancement Project**

Insurances to be provided, or caused to be provided, by the Owner through the Metrolinx Construction Insurance Program (“OCIP”)

Type (Claims Made)	Amount	Period of Insurance	Maximum SIR	Principal Cover
<b>Appendix A - Insurance 3 (A3)</b>				
<b>Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability):</b>	<p>[\$[REDACTED]] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Major Extensions:</p> <ul style="list-style-type: none"> <li>• Hazardous Substances occurring at or emanating from the Works or the Lands or any Additional Lands during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up Costs</li> <li>• Disposal Site Extension, including Transportation (reporting required)</li> <li>• Duty to Defend</li> <li>• Canada and US Territory</li> <li>• Contractual Liability</li> <li>• Emergency Response Costs</li> <li>• Breach of Conditions</li> </ul> <p>Major Exclusions:</p> <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• War</li> <li>• Intentional Non-compliance</li> <li>• Prior Knowledge / Known Condition / Pre-Existing Condition (exception for exacerbation, aggravation, worsening)</li> <li>• WSIB</li> <li>• Employers’ Liability</li> <li>• Professional Liability</li> <li>• Nuclear Liability</li> <li>• Property Damage to Motor Vehicles during Transportation</li> </ul>	<p>ADA Commencement Date to the date of Completion plus 36 month Extended Reporting Period</p>	<p>[\$[REDACTED]] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Lands, any Additional Lands, and off-Site, as required.</p>

Type (Claims Made)	Amount	Period of Insurance	Maximum SIR	Principal Cover
<i>Comments</i>				<ul style="list-style-type: none"> <li>Named Insured will include NOPs, Owner, and all other parties engaged in the Works or with an insurable interest or required to be noted as a Named, Additional Named or Additional insured by contract or agreement including but not limited to, subcontractors, sub-subcontractors, consultants and sub-consultants</li> <li>Waiver of subrogation in favour of Named, Additional Named and/or Additional Insureds where required by contract or agreement</li> <li>This coverage shall be primary with respect to the Works without right of contribution of any insurance carried by the Named Insured.</li> <li>The directors, officers, shareholders and employees of the foregoing shall be Additional Insureds</li> <li>Policy to be non-cancellable except for premium non-payment, material change to the risk abandonment material misrepresentation or concealment of facts, or a material breach of any condition of the policy. Policy cancellable at anytime by the Owner subject to minimum retained premium</li> </ul>



**Works Insurance – Union Station Enhancement Project**

Insurances to be provided, or caused to be provided, by the Owner through the Metrolinx Construction Insurance Program (“OCIP”)

Type (Claims Made)	Amount	Period of Insurance	Maximum Deductible	Principal Cover
<b>Appendix A – Insurance 4 (A4) Project Specific Professional Insurance</b>	<p>                     \$[REDACTED] minimum per claim /                      \$[REDACTED] in the aggregate (inclusive of                      defence and related costs and supplementary                      payments).                 </p> <p>Major Extensions:</p> <ul style="list-style-type: none"> <li>• Mitigation and Rectification</li> <li>• Metrolinx as Administrative Party</li> <li>• Breach of Conditions</li> <li>• Broad definition of Professional Services</li> <li>▪ Contractual liability amendment</li> <li>▪ Primary insurance extension</li> <li>• Automatic addition of firms for 60 days, subject to Notice after 60 days, and subject to definition of professional services</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide Territory, subject to suits brought in Canada</li> </ul> <p>Major Exclusions:</p> <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> </ul>	<p>ADA Commencement Date to date of Completion plus 36 months Extended Reporting Period</p>	<p>                     \$[REDACTED] mitigation and rectification                       \$[REDACTED] all other                 </p>	<p>Project Specific Professional Insurance in connection with the design and construction of the Works from beginning of first design, through the entire construction period, to date of Completion plus coverage for an extended reporting period of not less than 36 months.</p>

Type (Claims Made)	Amount	Period of Insurance	Maximum Deductible	Principal Cover
	<ul style="list-style-type: none"> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees except where allowable by law</li> <li>• Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> <li>• Fraudulent or dishonest conduct</li> <li>• Increase in Painshare/Reduction in Gainshare (unless caused by a breach of professional duty)</li> <li>• Betterments</li> <li>• Sanctions Clause</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured NOPs, Owner, all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li> <li>• This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by Named Insured</li> <li>• Professional Services covered: All architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services, and procurement services, including their replacements and/or sub-consultants of any tier, construction management, and temporary design</li> <li>• Retroactive Date: Full retroactive coverage from date of first design activity</li> </ul>			<ul style="list-style-type: none"> <li>• Policy to be non-cancellable except for premium non-payment, material change to the risk abandonment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy. Policy cancellable at anytime by the Owner subject to minimum retained premium</li> </ul>

**APPENDIX B  
NOP INSURANCE REQUIREMENTS**

**Works Insurance – Union Station Enhancement Project**

**Insurances to be provided, or caused to be provided by each NOP**

Type	Amount	Period of Insurance	Principal Cover
<b>Appendix B – Insurance 1 (B1)</b>  <b>Automobile Liability</b>	<p>§[REDACTED] (Minimum) for NOP vehicles</p> <p>§[REDACTED] (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Lands or any Temporary Lands</p>	ADA Commencement Date to the Final Completion Date	<p>Standard Ontario Owners Form for all vehicles operated by NOP, NOP Parties all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p>

*Comments*

- Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Participants or 15 days for non payment of premium
- Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy.

**Appendix B – Insurance 2 (B2)**

**Commercial General Liability and Non-Owned Automobile Liability**

For NOP, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent

§[REDACTED] each occurrence, and in the annual general aggregate and aggregate with respect to Broad Form Products and Completed Operations for NOP and NOP Parties

§[REDACTED] each occurrence and in the annual general aggregate and aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works

ADA Commencement Date to the Final Completion Date

Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), Broad Form Products and Completed Operations Liability.

This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the “Wrap-Up” Commercial General Liability Insurance policy’s Products and Completed Operations extension period.

Type	Amount	Period of Insurance	Principal Cover
Employers Liability, Products and Completed Operations Liability, and Owner's and Contractor's Protective extensions	<p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• Full policy limits with respect to Non-Owned Automobile Liability</li> <li>• <b>§[REDACTED]</b> Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions required to be provided by each NOP and shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works:</p> <ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/ underpinning/pile driving/ shoring/ caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability (SPF #6)</li> <li>• Contractual Liability Endorsement SPF#96</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles' (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> </ul>		

Type	Amount	Period of Insurance	Principal Cover
	<ul style="list-style-type: none"> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> <li>• Breach of Conditions</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Lands or any Temporary Lands</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Sanctions Clause</li> <li>• Asbestos</li> </ul>		
<i>Comments</i>			<ul style="list-style-type: none"> <li>• The NOP Party will be identified as Named Insured. Owner, other NOP Parties, and the City of Toronto will be identified as Additional Insureds and any other party required to be included by contract or agreement as an Additional Insured. All policies where permitted will include a waiver of subrogation in favour of all Named, Additional Named and Additional Insureds</li> <li>• Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Participants or 15 days for non payment of premium</li> <li>• Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy.</li> </ul>

Type	Amount	Period of Insurance	Principal Cover
<b>Appendix B – Insurance 3 (B3)</b> <b>“All Risks” Ocean Marine Cargo</b> <b>(If any exposure)</b>	<b>[REDACTED]</b> % Replacement Cost Valuation basis	Commencement of Early Works to the Final Completion Date or termination of the Insured’s involvement Date in the Works	Property of Every description destined for incorporation into the Works during marine transit, on a full replacement value basis, with no co-insurance provision.
<i>Comments</i> <ul style="list-style-type: none"> <li>NOP Party will be identified as Named Insured. Owner, other NOP Parties, and the City of Toronto will be identified as Additional Insureds, and any other party required to be included by contract or agreement as an Additional Insured. All policies where permitted will include a waiver of subrogation in favour of all Named, Additional Named and Additional Insureds</li> <li>Include a Breach of Conditions clause</li> <li>This coverage shall be primary with respect to the Works without right of contribution of any insurance carried by Owner</li> <li>Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy.</li> </ul>			
<b>Appendix B – Insurance 4 (B4)</b> <b>“All Risks” Contractors’ Equipment</b> To cover NOP’s subcontractors, sub-subcontractors consultants and sub-consultants	If Site equipment is three years old or less the sum insured shall be equal to <b>[REDACTED]</b> % of the replacement value of all contractors’ equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.	Commencement of the Early Works to the Final Completion Date or termination of the Insured’s involvement in the Works	“All Risks” coverage on all owned, rented, leased or borrowed contractors’ equipment used at the Lands or any Temporary Lands
<i>Comments</i> <ul style="list-style-type: none"> <li>NOP Party will be identified as Named Insured. Owner, other NOP Parties, and the City of Toronto will be identified as Additional Insureds, and any other party required to be included by contract or agreement as an Additional Insured. All policies where permitted will include a waiver of subrogation in favour of all Named, Additional Named and Additional Insureds</li> <li>Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy.</li> <li>Include a Breach of Conditions clause</li> <li>This coverage shall be primary with respect to the Works without right of contribution of any insurance carried by Owner</li> </ul>			

Type	Amount	Period of Insurance	Principal Cover
<u>Appendix B</u> - <u>Insurance 5 (B5)</u> WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) NOP, and its Affiliates shall obtain and maintain at their expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) NOP, ensure that satisfactory evidence of WSIB Insurance is provided by all NOPs, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Lands and any Temporary Lands</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Within 60 days of all NOPs having complied with their obligation relating to the whole of the Works, including all obligations arising during the Defects Correction Period, the NOP shall provide the Owner with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days after such request, NOP shall deliver to Owner evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>

## SCHEDULE 10 SITE INVESTIGATION

The following Sections shall apply where any AD Participants are required to carry out site investigation services (“**Site Investigation Services**”) in accordance with this ADA:

### 1 Site Security

- 1.1 The AD Participants shall maintain a record of all visitors to the site(s) where Site Investigation Services are performed (“**Investigation Site(s)**”) and shall, if and when instructed by the Owner’s Representative, give to the Owner a list of names of all persons who have or are expected to visit the Investigation Site(s), specifying the capacities in which they are so concerned, and giving such other particulars as the Owner’s Representative may reasonably require. The AD Participants shall take all reasonable steps and all steps required by this ADA to prevent unauthorized persons being admitted to the Investigation Site(s).
- 1.2 Where access to the Investigation Site(s) is required by way of the Owner’s land, the route of such access shall be approved by the Owner’s Representative. The AD Participants shall be responsible for ensuring that no person employed on the AD Participants’ behalf trespasses beyond the agreed limits of the working area or access route and shall, if required to do so, provide and maintain to the satisfaction of the Owner’s Representative temporary fencing of an approved type to prevent trespass on the railway or neighbouring land.
- 1.3 If passes are required for admission to the Investigation Site(s), the Owner shall either issue them to the AD Participants or arrange for their issue to the AD Participants. The AD Participants shall submit to the Owner’s Representative a list of the names of the relevant employees and other persons issued or to be issued with passes, and any other information which the Owner’s Representative reasonably requires. The passes shall be returned at any time on the demand of the Owner’s Representative and in any case on the completion of the relevant Site Investigation Services.

### 2 Site investigation, contamination and pollution

- 2.1 If during any site investigations, the AD Participants encounter unforeseen contamination or hazardous conditions they shall immediately:
  - (a) inform the Owner;
  - (b) take whatever steps they consider necessary to protect their staff and other persons and property and to secure the site insofar as is possible or safe; and
  - (c) notify the Owner’s Representative of the AD Participants’ assessment of the nature of the contamination or hazard.

If as a result of encountering such conditions it is necessary in the AD Participants’ opinion, whether for reasons of safety or protection of persons and property or otherwise to suspend the Site Investigation Services or part of the Site Investigation Services, they shall do so forthwith taking whatever steps may be necessary to secure the site and exclude access by unauthorized persons.

- 2.2 If the investigation is more hazardous than could have been foreseen, the Owner’s Representative shall:



- (a) after discussion with the AD Participants and any local or other authority, confirm or amend the steps taken by the AD Participants under Section 2.1(b) of this ADA Schedule 10 – Site Investigations;
  - (b) confirm or amend any suspension of the Site Investigation Services; and
  - (c) if applicable, issue a Scope Variation to which ADA Section 12.9 shall apply.
- 2.3 If during the carrying out of the Site Investigation Services, the AD Participants shall encounter ground or geological conditions or other physical conditions which in their opinion make it necessary for the effectiveness of the investigation or for the adequacy of any report to vary the investigation or to continue the investigation to a greater extent than specified in this ADA, they shall advise the Owner's Representative immediately and request a Scope Variation. In the event that the Owner's Representative is not available to issue a Scope Variation, the AD Participants may continue such operations or change the mode of operation at their own discretion provided the additional cost of such changes does not exceed any sum specified in the Request for Estimate or Estimate Approval or otherwise notified to the AD Participants in writing. Any such change to the investigation shall be treated as though it was carried out pursuant to a Scope Variation and ADA Section 12.9 shall apply, unless the Owner decides that the change was unnecessary.
- 2.4 On completion of a borehole to its specified depth or to a greater depth under Section 2.3 of this ADA Schedule 10 – Site Investigations, the AD Participants may unless this ADA provides otherwise backfill the boreholes in accordance with good practice.
- 2.5 If this ADA shall require or the Owner directs the AD Participants to make available on the site or elsewhere the services of suitably qualified persons for the description of soils and rocks, logging of trial pits, carrying out of geological and geotechnical appraisals, other intrusive surveys, other technical and advisory services (as appropriate) and the preparation of technical reports, the extent and scope of the service required shall be specified in the Request for Estimate.

### **3 Speed Restrictions, Track Possessions and/or Isolations**

- 3.1 The AD Participants shall in all cases submit written notice to the Owner's Representative confirming any speed restrictions, track possession or isolation requirements in accordance with the Owner's current planning procedures (or as otherwise set out in this ADA) in advance of any proposed commencement of Site Investigation Services on or near the railway lines.
- 3.2 The Owner reserves the right to cancel or alter the dates and times of the agreed speed restrictions, track possessions or isolations at short notice if this proves necessary because of any emergency affecting the safe or uninterrupted running of rail traffic, but in such an event alternative arrangements will be made as soon as the Owner's schedule permits.
- 3.3 Where any part of the Site Investigation Services has to be carried out during an agreed period of a speed restriction, track possession or isolation, the AD Participants shall make adequate arrangements to ensure that such Site Investigation Services can commence as scheduled, and can be completed as early as possible, and in any case within that period. The arrangements shall include the provision of sufficient and suitable equipment (including, where practicable, standby equipment) and sufficient labour.
- 3.4 Prior to the commencement of any speed restriction, track possession or isolation, if the Owner's Representative is of the opinion that the AD Participants have failed to comply with the requirements of this Section, the Owner's Representative may at their discretion

cancel the speed restriction, track possession or isolation, or reduce the extent of the Site Investigation Services that the AD Participants may carry out during such speed restriction, track possession or isolation, and shall notify the AD Participants accordingly.

- 3.5 If, during a speed restriction, track possession or isolation, the Owner's Representative is of the opinion that the AD Participants will be unable to complete the planned Site Investigation Services (or any revision thereof proposed by the AD Participants) to the Owner's Representative's satisfaction so as to permit the termination of the speed restriction, track possession or isolation at the time agreed, then the Owner's Representative may instruct the AD Participants to reduce the extent of or vary the dates and times of the Site Investigation Services to be carried out during such speed restriction, track possession or isolation.

## **SCHEDULE 11 EARLY WORKS**

### **1. INTRODUCTION**

#### **1.1 Delivery of Early Works**

In the event the Owner's Representative accepts an Early Works Proposal under Section 12.6.1.1, the AD Participants will cause such Early Works set forth and described in such Early Works Proposal to be performed in accordance with:

- 1.1.1 the terms and conditions set forth in the Early Works Proposal; and
- 1.1.2 the provisions set forth in this Schedule 11 (Early Works); and
- 1.1.3 the relevant sections of the Project Alliance Agreement referred to herein,  
taking into account all of the above and the other requirements of this ADA.

#### **1.2 Relationship to Project Alliance Agreement**

- 1.2.1 Any reference to a section, part, annex, schedule or table in the PAA in this Schedule 11 (Early Works) is deemed to incorporate such Section, part, annex, schedule or table into this ADA as if such section, part, annex, schedule or table was expressly set out herein with any necessary amendments *mutatis mutandis*.
- 1.2.2 Definitions used in the PAA apply to this Schedule 11 (Early Works) unless the context requires otherwise.
- 1.2.3 Any reference to "Works" in the PAA provisions enumerated below shall be deemed to include the Early Works set forth in the applicable Early Works Proposal.

### **2. SECTIONS OF PAA APPLICABLE TO EARLY WORKS**

#### **2.1** The AD Participants acknowledge and agree that the following Sections of the PAA shall apply to the design and construction of any Early Works:

- 2.1.1 Section 1 (Definitions and Interpretation);
- 2.1.2 Section 13 (Design of the Works);
- 2.1.3 Section 14 (Commencement of the Works);
- 2.1.4 Section 15 (Site);
- 2.1.5 Section 16 (Construction of the Works);
- 2.1.6 Section 17 (Site Security);
- 2.1.7 Section 18 (Safety Requirements);
- 2.1.8 Section 19 (Applicable Law and Consents);
- 2.1.9 Section 21 (Implementation Works and Early Works);

- 2.1.10 Section 23 (Use of the Works by the Owner Prior to Completion);
- 2.1.11 Section 25 (Defects);
- 2.1.12 Sections 27.1 through 27.5 inclusive (of Section 27 – Directions); and
- 2.1.13 Sections 31.3 and 31.4 (of Section 31 – Reports, Records Access and Audit).

### **3. RAIL CORRIDOR ACCESS**

- 3.1** The provisions of Schedule 17 (Rail Corridor Access) shall apply to any NOP that is required to perform any Early Works during the AD Phase.

## **SCHEDULE 12 PAYMENT PROCEDURES**

### **1 INTRODUCTION**

#### **1.1 General principles**

Subject to the provisions of this ADA and in accordance with Applicable Law, including the Construction Act, the Owner shall:

1.1.1 pay each NOP the undisputed amounts payable under Proper Invoices provided to the Owner's Representative in accordance with this ADA, on account of:

1.1.1.1 Actual Cost; and

1.1.1.2 Fee,

as determined in accordance with Schedule 4 (Actual Cost), Schedule 5 (Fee) and this Schedule 12 (Payment Procedures);

#### **1.2 Calculation of aggregate amount due to each NOP**

Payments due to or from the NOPs under this ADA are to be determined by calculating:

1.2.1 the aggregate amount due to the NOPs from the AD Commencement Date to the relevant payment ascertainment date; and

1.2.2 deducting the aggregate of all previous payments due to the NOPs under this ADA.

#### **1.3 Holdbacks**

1.3.1 The Owner shall retain an amount equal to the amount required to be held back pursuant to the Construction Act in respect of liens that may be claimed from each sum otherwise payable to the NOPs under this ADA that is not a release of any monies so retained.

1.3.2 Subject to Section 1.3.3 of this Schedule 12 (Payment Procedures), any holdbacks retained pursuant to Section 1.3.1 of this Schedule 12 (Payment Procedures) shall not be due and payable until after the expiry of the applicable period for preservation of liens under the Construction Act, and provided that no liens are preserved by persons supplying the Services or Early Works.

1.3.3 Notwithstanding any provision of this ADA:

1.3.3.1 no sum shall be payable by the Owner to the NOPs pursuant to this ADA if, at the time such sum would otherwise be payable, there is outstanding and unsatisfied any claim for lien which has been preserved pursuant to the Construction Act by any person for services or materials provided directly or indirectly to the NOPs to enable performance of any part(s) of the Services or Early Works, or the Owner has received a written notice of lien in that regard; and

1.3.3.2 where any sum which would otherwise be payable by the Owner to the NOPs is not so payable because a claim for lien has been preserved pursuant to the Construction Act, or the Owner has received written notice of such a lien, such sum shall be payable to the NOPs only at such time when all liens or written notices of a lien which may be claimed against that sum have expired or been satisfied,

withdrawn, discharged or vacated by an order made pursuant to a payment into court in accordance with the Construction Act.

## **2 PROPER INVOICES**

### **2.1 Agreed form of Proper Invoice**

On or as soon as possible after the AD Commencement Date, the AMT must develop and the ALT must agree upon a form of Proper Invoice to be provided by each NOP detailing the information referred to in Section 2.22.2 of this Schedule 12 (Payment Procedures) and which will enable ready identification of Actual Costs, holdbacks and payments to Subcontractors.

### **2.2 Proper Invoice**

For the purposes of this ADA, "**Proper Invoice**" shall mean a written bill or other request for payment for services or materials comprising the Services or Early Works performed under this ADA issued by each NOP, provided such bill or request shall:

- 2.2.1 contain the information set out in Section 6.1 of the Construction Act;
- 2.2.2 set out the cumulative Actual Cost, Fee and other amounts certified by the Alliance Director for all Services or Early Works performed by the NOP up to the end of the calendar month immediately prior to the current Payment Period;
- 2.2.3 identify the amounts due to or from the NOP, including Actual Cost, Fee and other amounts, for all Services and Early Works performed by the NOP up to the end of the Payment Period and the calculation of each such amount, together with all supporting information and verification as may be required by this ADA;
- 2.2.4 outline the aggregate amount of the holdback retained by the Owner under this ADA, the allocation of such holdback as between the NOPs, and the amount of the holdback to be retained under and applicable to the current Proper Invoice;
- 2.2.5 evidence of compliance with workers' compensation insurance requirements in respect of Works performed on or in the vicinity of the Site, including a WSIB clearance certificate;
- 2.2.6 attach a statutory declaration on an original form of CCDC Document 9A-2018 Statutory Declaration of Progress Payment Distribution by Contractor, declaring that payments in connection with the Services or Works, as noted in the statutory declaration, have been made to the end of the calendar month immediately preceding the Payment Period covered by the current application (the statutory declaration shall be dated the same date as the Proper Invoice);
- 2.2.7 attach a statutory declaration from any Subcontractor, as may be identified by the Alliance Director, on an original form of CCDC Document 9B-2018 Statutory Declaration of Progress Payment Distribution by Subcontractor (the statutory declaration shall be dated the same date as the Proper Invoice);
- 2.2.8 for advance payment for Materials not yet incorporated into the Early Works: (1) list such Materials (and the advance payment calculations in respect thereof) as a separate line item; and (2) be supported by invoices and such other evidence as the Alliance Director may reasonably request to establish the value and delivery date of such Materials;
- 2.2.9 satisfy invoicing requirements of Applicable Law in respect of tax and, in particular, include the NOP's registration number for HST and list the total amount of HST separate from the

total amount payable and list the total amount due (total amount of HST plus the amount payable for the work completed in the current Payment Period);

2.2.10 include a statement in large font all in uppercase as follows: "THE CONSTRUCTION ACT, AS REVISED, IS APPLICABLE TO THIS INVOICE"; and

2.2.11 meet the additional requirements as outlined in Section 2.3, Section 2.4 and Section 2.5 of this Schedule 12 (Payment Procedures).

## 2.3 **Statement of amount due**

In addition to the information required by Section 2.2 above, each Proper Invoice must set out for each NOP:

2.3.1 any adjustment to the cumulative Actual Cost previously certified up to the end of the current Payment Period, including any adjustments required in accordance with this ADA (and the amount determined at this Section 2.3.1 may be a negative amount);

2.3.2 the cumulative Fee due up to the end of the Payment Period in accordance with Schedule 5 (Fee), including any adjustments required in accordance with this ADA; and

2.3.3 the net amount for the current Payment Period ("**Payment Period Amount**"), being:

2.3.3.1 the total adjusted amount due in respect of Actual Cost and Fee (and this may be a negative amount); and

2.3.3.2 the total of all other amounts due to the relevant NOP from the Owner in accordance with this ADA;

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2.3.3.3 the aggregate of all previous payments paid or payable in respect of the relevant NOP; and

2.3.3.4 the total of all other amounts due to the Owner from the relevant NOP in accordance with this ADA,

and if the amount determined in accordance with this Section 2.3.3 is a negative amount, the amount due under the relevant Proper Invoice is an amount due from that NOP to the Owner.

2.3.4 Each Proper Invoice submitted by an AD Participant must be certified as correct by that AD Participant and must be supported by such certified documentation as may be required by the Alliance Director from time to time.

## 2.4 **Owner Participant's Statement**

2.4.1 The Owner Participant's statement for each Payment Period must set out the Actual Costs notionally incurred by it for the relevant Works.

## 2.5 **Review process**

2.5.1 On a monthly basis, the following process shall be followed in relation to applications for payment on account as provided in Section 1.1.1 of this Schedule 12 (Payment Procedures) and pursuant to the delivery of Proper Invoices:

- 2.5.1.1 on either the **[REDACTED]** or **[REDACTED]** day of the calendar month, or where the **[REDACTED]** or **[REDACTED]** day of the month is not a Business Day, on the immediately following Business Day, the AD Participant shall submit to the Alliance Director a breakdown of the schedule of values for Actual Costs incurred during the immediately preceding calendar month for the Services or early Works, including outlining the cumulative Actual Costs up to the end of the immediately preceding calendar month. Such breakdown shall be provided in such form and supported by such evidence as the Alliance Director may reasonably require;
- 2.5.1.2 from and including the **[REDACTED]** day of the calendar month, to and including the **[REDACTED]** day of the calendar month, the AD Participant shall participate in a monthly pre-screening meeting with the Alliance Director, in accordance with the Alliance Director's timing and requirements, to review the particulars, details, information and documentation, including the breakdown of the schedule of values, proposed to constitute the basis of the AD Participant's Proper Invoice for such month, so as to assist the AD Participant with the preparation and submission of its Proper Invoice;
- 2.5.1.3 from and including the **[REDACTED]** day of the calendar month, to and including the **[REDACTED]** day of the calendar month, between the hours of 9:00 A.M. and 5:00 P.M. on a Business Day, the AD Participant shall submit simultaneously to the Owner (c/o the Owner's Finance Department) and to the Alliance Director, a Proper Invoice for payment, for the immediately preceding calendar month;
- 2.5.1.4 for clarity, if the Proper Invoice is received by either the Owner or the Alliance Director after 5:00 PM on a Business Day or at any time on a non-Business Day, the Proper Invoice shall be deemed to be received on the following Business Day;
- 2.5.1.5 the Alliance Director shall review and validate the Proper Invoice no later than five (5) calendar days after the Alliance Director's receipt (or deemed receipt) of the Proper Invoice; and
- 2.5.1.6 in the event that all or a portion of the Proper Invoice is disputed by the Alliance Director, the Alliance Director shall (on behalf of the Owner) issue a notice of non-payment of such disputed portion of the Proper Invoice in accordance with the Construction Act. The AD Participant shall amend the Proper Invoice and submit to both the Owner and the Alliance Director, a revised Proper Invoice for the non-disputed portion of the Proper Invoice within two (2) Business Days following receipt of the Owner's notice of non-payment, incorporating all of the information set out in the original Proper Invoice applicable to the non-disputed portion thereof. For clarity, the form and date of the Proper Invoice cannot change despite such a revision.
- 2.5.2 The AD Participants agree that any invoice submitted either: (i) prior to the **[REDACTED]** day of a calendar month; or (ii) after the **[REDACTED]** day of a calendar month; shall be the basis for the issuance of a notice of non-payment by the Owner in accordance with the Construction Act.
- 2.5.3 All supporting documentation relating to the amounts contained in the Proper Invoice shall be available for inspection and audit by the Alliance Director and the Alliance Auditor.



### 3 PAYMENT PROCEDURE FOR INTERIM PAYMENTS

#### 3.1 Alliance Director to certify

3.1.1 The Alliance Director must certify the amount (if any) due for payment in accordance with Section 2.3.3 by:

3.1.1.1 the Owner to the relevant NOP; or

3.1.1.2 the relevant NOP to the Owner,

and the basis on which that amount is calculated ("**Payment Certificate**") by no later than **[REDACTED]** calendar days after receipt by the Alliance Director of the Proper Invoice submitted by the relevant AD Participant.

3.1.2 The Payment Certificate issued by the Alliance Director must be issued to the Owner's Representative, the Owner Participant and to each NOP on the date that it is certified.

3.1.3 A Payment Certificate must be issued even if the Alliance Director considers the amount due to be zero.

#### 3.2 Due dates for interim payments

3.2.1 In respect of any Payment Certificate:

3.2.1.1 subject to the provisions of the Construction Act, the Owner must pay the sum certified by the Alliance Director in the Payment Certificate (together with any HST thereon) to the relevant NOP by no later than **[REDACTED]** calendar days after receipt by the Alliance Director of the Proper Invoice (the "**Due Date for Interim Payment**"); and

3.2.1.2 where there is a sum due to the Owner from any NOP, that NOP must pay the sum due to the Owner no later than the date that is **[REDACTED]** Business Days after the NOP's receipt of the Payment Certificate ("**Due Date for Refund**").

3.2.2 On receipt of payment from the Owner or notice of non-payment from the Alliance Director, the NOP shall comply with the Construction Act and either cause payment to be made to all Subcontractors, trade contractors, workers and suppliers promptly when due in accordance with the Construction Act or issue notices of non-payment in accordance with the timelines and requirements of the Construction Act. Additionally, the NOP shall take all necessary steps to ensure that its Subcontractors comply with the payment requirements of the Construction Act.

3.2.3 Nothing in this Schedule 12 (Payment Procedures) limits the Owner's rights to withhold or deduct payments in accordance with this ADA, Applicable Law, or pursuant to any statutory rights it possesses.

#### 3.3 Establishing Bank Account

3.3.1 Within five (5) Business Days of the ADA Commencement Date, each NOP must notify the Owner's Representative in writing of its nominated bank account for payments by the Owner to each NOP under this ADA ("**Bank Account**").

3.3.2 Any NOP may change its Bank Account by notifying the Owner's Representative in writing of that NOP's new nominated bank account for payments by the Owner to that NOP under

this ADA, provided that notice under this Section 3.3.2 is given by that NOP to the Owner's Representative at least ten (10) Business Days prior to the due date for payment under this ADA.

#### **4 COMPLETION OF EARLY WORKS**

- 4.1 As soon as the ALT considers that completion has been reached in respect of the Early Works, it shall deliver to the Owner's Representative a comprehensive list of items to be completed or corrected. Failure to include an item on the list does not alter the responsibility of the AD Participants to complete the Early Works.
- 4.2 Immediately prior to the issuance of the Certificate of Substantial Performance of the Early Works in accordance with Section 4.3 of this Schedule 12 (Payment Procedures), the AD Participants, in consultation with the Owner's Representative, shall establish reasonable dates for finishing the Early Works and correcting deficiencies, and the construction schedule shall be deemed to be amended to include this completion schedule.
- 4.3 Within seven (7) calendar days of receiving a copy of the certificate of completion in respect of the Early Works signed by the Owner's Representative, the AD Participants shall publish a certification or declaration of the substantial performance of the Early Works ("**Certificate of Substantial Performance of the Early Works**") in accordance with the requirements of the Construction Act in a construction trade newspaper (as that term is defined in the Construction Act or the regulations promulgated thereunder) and shall provide to the Owner's Representative a copy of such certificate and confirmation of the date of publication and the name of the construction trade newspaper in which the publication occurred. If the AD Participants fail to comply with this provision, the Owner may publish a copy of the certificate and the costs so incurred will be considered Actual Costs of the Owner Participant.

#### **5 RELEASE OF HOLDBACK ON COMPLETION OF EARLY WORKS**

- 5.1 After due publication of the Certificate of Substantial Performance of the Early Works, each NOP shall:
- 5.1.1 submit an application requesting the release of the applicable holdback amount;
- 5.1.2 attach a statutory declaration on an original form CCDC 9A – 2018 Statutory Declaration to state that all accounts for services or materials and other indebtedness which may have been incurred by the NOP in connection with the Early Works and for which the Owner might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute and, if requested by the Owner, attach a statutory declaration from any Subcontractor, as may be identified by the Owner, on an original form of CCDC Document 9B – 2018 Statutory Declaration of Progress Payment Distribution by Subcontractor; and
- 5.1.3 by no later than thirty (30) days following the date of publication of the Certificate of Substantial Performance of the Early Works, provide confirmation to the Owner and the Alliance Auditor in writing that:
- 5.1.3.1 there are no preserved or perfected liens in respect of the Early Works or in respect of any Subcontractors, suppliers or other subtrades or sub-subtrades of the NOP;  
or
- 5.1.3.2 all liens in respect of the Early Works, and all liens in respect of any of the Subcontractors, Suppliers or other subtrades or sub-subtrades of the NOP, have

been satisfied, discharged or otherwise provided for under the Construction Act and the NOP shall provide proof of same to the Owner and the Alliance Auditor.

- 5.2 After the receipt of applications from the NOPs requesting release of the holdback and the documents as provided in Sections 5.1.2 and 5.1.3 above, the Owner's Representative will certify payment of the accrued holdback amounts.
- 5.3 The statutory holdback amount authorized by the certificate for payment referred to in Section 5.2 above is due and payable on the day following the expiry of the holdback period specified in the Construction Act for the retention of basic holdback funds following substantial performance of the work, unless (i) a claim for lien has been registered against title to the Site; (ii) the Owner has received a valid written notice of lien in respect of the Works; or (iii) the Owner has published a notice of non-payment in the form prescribed by the Construction Act prior to the fortieth (40<sup>th</sup>) calendar day following the publication of the Certificate of Substantial Performance of the Early Works.

## **6 RELEASE OF FINISHING HOLDBACK**

- 6.1 Prior to release of the holdback for finishing work provided for under the Construction Act in respect of Early Works, each NOP shall submit:
  - 6.1.1 a written request for release of the holdback for finishing work (if applicable), including a declaration that the NOP's obligations relating to the subject Early Works, including all obligations arising in respect of defect corrections, have been completed;
  - 6.1.2 written confirmation that no written notices of lien have been received by it;
  - 6.1.3 a statutory declaration on an original form CCDC 9A – 2018 Statutory Declaration to state that all accounts for labour, Subcontracts, Materials, Construction Plant, and other indebtedness which may have been incurred by the NOP in connection with the finishing works and for which the Owner might in any way be held responsible have been paid in full; and
  - 6.1.4 a final WSIB clearance certificate.

## **7 FINAL PAYMENT**

### **7.1 Final submission by NOPs**

Within sixty (60) days of all the AD Participants having complied with all of their respective obligations relating to the whole of the Services and Early Works, including all obligations arising in respect of defect corrections, each NOP must submit to the AMT (copied to the ALT) a statement of final account stating the amounts due to or from it under this ADA (if any and as the case may be) in respect of:

- 7.1.1 Actual Cost;
- 7.1.2 Overhead;
- 7.1.3 Profit;
- 7.1.4 its share of any Performance Reward Amount or Performance Liability Amount;
- 7.1.5 any other amounts due to or from it under this ADA; and

7.1.6 all payments received or made by that NOP.

## 7.2 **Final submission by the Owner Participant**

Within sixty (60) days of all the AD Participants having complied with all of their respective obligations relating to the whole of the Services and Early Works, including all obligations arising during the defects corrections period, the Owner Participant must submit to the AMT (copied to the ALT) a statement of final account stating the final amounts due to or from it under this ADA (if any and as the case may be) in respect of Actual Cost.

## 7.3 **AMT to prepare final account**

7.3.1 The AMT must calculate the Actual Cost on the basis of the final statements provided by the AD Participants under Sections 7.1 and 7.2 and submit a consolidated statement of final account to the ALT copied to each AD Participant stating for each AD Participant all:

7.3.1.1 Actual Cost;

7.3.1.2 Overhead;

7.3.1.3 Profit;

7.3.1.4 payments due under the Performance Incentivization Regime (if any);

7.3.1.5 other payments due under this ADA; and

7.3.1.6 all payments made to or from the relevant Participant.

7.3.2 The AMT must prepare the draft Final Certificate in accordance with Section 7.5 of this Schedule 12 (Payment Procedures) and submit it for approval by the ALT and Alliance Auditor with the final account prepared under Section 7.3.1 above for the ADA.

## 7.4 **Agreement of final account by ALT and Alliance Auditor**

7.4.1 The ALT and the Alliance Auditor must consider the consolidated statement of final account and draft Final Certificate submitted by the AMT under Section 7.3 within three (3) months.

7.4.2 The ALT and/or Alliance Auditor may request the AMT to provide further information and/or substantiation of the final account and draft Final Certificate submitted by the AMT under Section 7.3. The Alliance Auditor may provide comments to the ALT on the final account and draft Final Certificate.

7.4.3 Should the ALT disagree with the final account and/or draft Final Certificate submitted by the AMT under Section 7.3, it must promptly notify the AD Participants and AMT giving all the reasons for the failure to agree.

7.4.4 The ALT must ensure that the AD Participants promptly address the reasons for disagreement given by the ALT under Section 7.4.3 and when those reasons have been addressed, re-consider and seek to agree to all matters relating to the final account and draft Final Certificate.

7.4.5 The process in this Section 7.4 is repeated until the final account and draft Final Certificate is agreed by the ALT and the Alliance Auditor and the Alliance Director is notified by the ALT of such agreement.

- 7.4.6 The AMT must endeavour to re-determine and resubmit the final account and draft Final Certificate in accordance with the ALT's requirements within ten (10) Business Days (or such later date as is fair and reasonable having regard to any delay by the AD Participants) and in any case within such period to enable the Alliance Director to issue a Final Certificate in accordance with Section 7.5 of this Schedule 12 (Payment Procedures).

## 7.5 Final Account and Final Certificate

- 7.5.1 The Alliance Director must issue a final payment certificate to reflect the final account and draft Final Certificate notified and agreed in accordance with Section 7.4 above ("**Final Certificate**").
- 7.5.2 The Alliance Director must issue the Final Certificate to the Owner and each AD Participant:
- 7.5.2.1 within twenty (20) Business Days of the agreement of the Final Certificate by the ALT;
  - 7.5.2.2 within three (3) months of the agreement by the ALT of the final account; or
  - 7.5.2.3 by the date the AD Participants have complied with all of their obligations relating to the whole of the Services and Early Works,
- whichever is the latest.
- 7.5.3 A Final Certificate must be issued even if the amount due is zero.
- 7.5.4 In the Final Certificate, the Alliance Director must certify that all the AD Participants' obligations relating to the Services and the Early Works have been properly completed in accordance with this ADA; and
- 7.5.5 In the Final Certificate, the Alliance Director must certify the following amounts:
- 7.5.5.1 the aggregate of all Actual Cost and Fee due to each NOP;
  - 7.5.5.2 the aggregate Actual Cost incurred by the Owner Participant;
  - 7.5.5.3 the amount paid by the Owner to each NOP prior to the date of the Final Certificate;
  - 7.5.5.4 the amount paid by each NOP to the Owner prior to the date of the Final Certificate;
  - 7.5.5.5 the calculation of any Performance Reward Amount or Performance Liability Amount under the Performance Incentivization Regime and each NOP's share thereof;
  - 7.5.5.6 any other amounts due to each NOP from the Owner;
  - 7.5.5.7 any other amounts due from each NOP to the Owner under this ADA; and
  - 7.5.5.8 the net amount which is finally due and payable to each NOP by the Owner or from each NOP to the Owner (as the case may be).

## 7.6 Final Payment

The Owner makes payment to each NOP and/or each NOP makes payment to the Owner (as the case may be) of any amount certified in the Final Certificate issued in accordance with Section 7.5.

## 7.7 Due date for final payment

7.7.1 The due date for any payment due under the Final Certificate is three (3) months from the date of receipt by the ALT of a consolidated statement of final account in accordance with Sections 7.1 and 7.2 and the information reasonably required for its verification (“**Due Date for Final Payment**”).

7.7.2 The Owner and/or each NOP (as the case may be) must make the payment certified in the Final Certificate within seven (7) days of the Due Date for Final Payment, which is the final date for payment of the final payment (“**Final Date for Final Payment**”).

## 8 OVERPAYMENTS AND UNDERPAYMENTS

8.1 If the payments made to a NOP are greater than that NOP’s entitlement to payment under this ADA (the difference being an “**Overpayment**”), then the Owner may either:

8.1.1 deduct an amount equal to the Overpayment from any consideration due or becoming due to that NOP, whether under this ADA or otherwise; or

8.1.2 require that NOP to reimburse to the Owner an amount equal to the Overpayment.

8.2 If the payments made to a NOP are less than that NOP’s entitlement to payment under this ADA (the difference being an “**Underpayment**”), then that NOP may require the Owner to pay an amount equal to the Underpayment to that NOP.

8.3 Where it is determined that a payment is required under this Section 8, such payment shall be considered to be an increase or reduction, as applicable, of the consideration for the supply by the NOP of the Works.

8.4 If a Party is required to make a payment under this Section 8, such Party must make that payment within twenty-one (21) Business Days of a written request for payment being made.

8.5 The Owner or any NOP may take steps to recover any amount payable to them under this Section 8 which is not paid in accordance with Section 8.4.

## 9 Harmonized Sales Tax

9.1 Unless expressly included, the consideration for any supply made under or in connection with this ADA does not include an amount on account of HST in respect of the supply.

9.2 Any amount referred to in this ADA (other than an amount referred to in Section 9.69.6 of this Schedule 12 (Payment Procedures)) which is relevant in determining a payment to be made by one of the Parties to another is, unless indicated otherwise, a reference to that amount expressed on a HST exclusive basis.

9.3 To the extent that HST is payable in respect of any supply made by a Party (“**Supplier**”) under or in connection with this ADA, the recipient of the supply shall pay the applicable HST upon receipt of a Proper Invoice in addition to the amount otherwise payable under this ADA.

- 9.4 Each NOP shall issue to the Owner a receipt evidencing payment by the Owner of any amount paid by the Owner pursuant to this ADA (including HST).
- 9.5 In the case of an Overpayment under Section 8.1 of this Schedule 12 (Payment Procedures): (i) where HST calculated on the amount of the Overpayment was charged but not collected, the NOP shall adjust the amount of HST charged by subtracting the portion of HST that was calculated on the amount of the Overpayment; and (ii) where HST calculated on the Overpayment was collected, the NOP shall pay or credit to the Owner an amount equal to the HST that had been collected on the amount of the Overpayment and issue a Credit Note containing the information prescribed under the ETA.
- 9.6 If a Party is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this ADA, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit or HST rebate to which the Party being reimbursed or indemnified (or its representative NOP) is entitled in relation to that loss, cost, expense or outgoing and, then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of HST under Section 9.1.
- 9.7 Notwithstanding Section 9.6 above, where a NOP is a Defaulting AD Participant and the Owner is entitled under this ADA to employ a Third Party to fulfill such NOP's obligations, the NOP shall reimburse and indemnify the Owner for any HST incurred by the Owner that is not recoverable through an input tax credit or similar mechanism to the extent such HST exceeds the unrecoverable HST that would have been payable by the Owner had there been no Default.

## **10 LATE PAYMENTS**

### **10.1 Interest on late payments**

Without prejudice to any other rights a NOP may have in respect of late payments due to it from the Owner or the Owner may have in respect of late payments due to it from any NOP under this ADA (as the case may be), to the extent that any such amount due to the Owner or any NOP is not paid to that person in accordance with this Schedule 12 (Payment Procedures) by:

- 10.1.1 the Due Date for Interim Payment under Section 3.2.1.1 of this Schedule 12 (Payment Procedures);
- 10.1.2 the Due Date for Refund under Section 3.2.1.2 of this Schedule 12 (Payment Procedures);  
or
- 10.1.3 the Final Date for Final Payment under Section 7.7.2 of this Schedule 12 (Payment Procedures),

interest will accumulate on such unpaid amount at the Default Interest Rate until the date of payment by the Owner or the relevant NOP (as the case may be) in accordance with this ADA and such interest is payable by the Owner to the relevant NOP or by the relevant NOP to the Owner (as the case may be) as an amount due under this ADA.

### **10.2 Suspension for Late Payment by the Owner**

Where the Owner fails to make any payment due and payable to a NOP under this ADA by the Due Date for Interim Payment, that NOP may give seven (7) days' written notice of its intention to suspend the execution of the Services or Early Works or part thereof by it and such suspension will continue until payment in full is made.

## **11 SET OFF**

### **11.1 The Owner's right of set off**

Without prejudice to any other rights the Owner may have under this ADA or at law, the Owner may on notice to any NOP set off any amount due to it from that NOP under this ADA against any amount due by the Owner to that NOP under this ADA.



## SCHEDULE 13

### PERFORMANCE INCENTIVIZATION REGIME

#### 1. GENERAL

##### 1.1 Performance Incentivization Regime

1.1.1 This Schedule 13 (Performance Incentivization Regime) sets out the general principles as to the manner in which the Performance Incentivization Regime is to operate.

The Performance Incentivization Regime as set out in this Schedule 13 (Performance Incentivization Regime) may result in a Performance Reward Amount payable by the Owner to the NOPs or a Performance Liability Amount payable by the NOPs to the Owner (if any and as the case may be).

#### 2. KEY RESULT AREAS

##### 2.1 Principles

2.1.1 The Performance Incentivization Regime is based upon the NOPs' performance in the Key Result Areas that are determined by the Owner and measured in accordance within the Key Result Areas set out in Annex 1 to this Schedule 13 (Performance Incentivization Regime).

2.1.2 The Performance Incentivization Regime with respect to the NOPs' performance of the ADA provides the NOPs with incentives to:

2.1.2.1 exceed MCOS Performance for specific KPIs where the Owner has determined that exceeding MCOS Performance will improve the overall VfM outcome; and

2.1.2.2 at a minimum, meet MCOS Performance for all KPIs.

2.1.3 The Performance Incentivization Regime will be applied such that:

2.1.3.1 Stretch Performance against the Key Result Areas (i.e. performance which is better than MCOS Performance against the Key Result Areas) will result in a Performance Reward Amount being payable by the Owner to the NOPs; and

2.1.3.2 Poor Performance against the Key Result Areas (i.e. performance which is worse than MCOS Performance against the Key Result Areas) will result in a Performance Liability Amount being payable by the NOPs to the Owner.

##### 2.2 Key Result Areas

2.2.1 The Key Result Areas are set out in Annex 1 to this Schedule 13. (Performance Incentivization Regime).

2.2.2 Each Key Result Area contains:

2.2.2.1 the Key Performance Indicators;

2.2.2.2 the weighting of each Key Result Area compared to the other Key Result Areas;

2.2.2.3 what constitutes Poor Performance, MCOS Performance and Stretch Performance;

2.2.2.4 methodologies and frequency for measuring performance and calculating a performance score; and

2.2.2.5 the relationship between the performance score and calculation of the Performance Reward Amount or Performance Liability Amount (if any).

### 2.3 KPI Caps - Maximum Amounts

2.3.1 A capped Performance Liability Amount and/or Performance Reward Amount is stipulated for each Key Result Area where, for each KPI:

2.3.1.1 the KPI Maximum Liability Amount defines the maximum Performance Liability Amount payable by the NOPs to the Owner for each KPI; and

2.3.1.2 the KPI Maximum Reward Amount defines the maximum Performance Reward Amount payable by the Owner to the NOPs for each KPI,

in accordance with this ADA and as set out in Annex 1 to this Schedule 13 (Performance Incentivization Regime).

### 2.4 Performance Liability Amount

2.4.1 For each KPI in respect of which the NOPs' performance fails to achieve MCOS Performance, the KPI Performance Liability Amount will be calculated as follows:

**"KPI Performance Liability Amount"** =  $(KPS/-100) \times$  KPI Maximum Liability Amount

Where:

2.4.1.1 **"KPS"** is the Key Performance Score for the relevant KPI calculated in accordance with Table 2 of Annex 1 of this Schedule 13 (Performance Incentivization Regime); and

2.4.1.2 **"KPI Maximum Liability Amount"** is the maximum Performance Liability Amount that the NOPs will be liable to pay the Owner for the relevant KPI as specified in Table 2 of Annex 1 of this Schedule 13 (Performance Incentivization Regime).

2.4.2 The **"Performance Liability Amount"** is equal to the sum of all KPI Performance Liability Amounts for that Key Result Area.

2.4.3 The Performance Liability Amount will be allocated amongst the NOPs in accordance with the ADA NOP Split.

2.4.4 The maximum aggregate of the Performance Liability Amounts that the NOPs may become liable to pay the Owner in respect of all Key Result Areas and KPIs under this ADA is equal to the sum of all KPI Maximum Liability Amounts (the **"Maximum Performance Liability Amount"**).

## 2.5 Performance Reward Amount

- 2.5.1 For each KPI in respect of which the NOPs' performance exceeds MCOS Performance, the KPI Performance Reward Amount will be calculated as follows:

**"KPI Performance Reward Amount"** =  $KPS/100 \times KPI \text{ Maximum Reward Amount}$

Where:

- 2.5.1.1 **"KPS"** is the Key Performance Score for the relevant KPI calculated in accordance with Table 2 of Annex 1 of this Schedule 13 (Performance Incentivization Regime); and
- 2.5.1.2 **"KPI Maximum Reward Amount"** is the maximum Performance Reward Amount that the Owner will be liable to pay to the NOPs for the relevant KPI as specified in accordance with Table 2 of Annex 1 of this Schedule 13 (Performance Incentivization Regime).
- 2.5.2 The **"Performance Reward Amount"** is equal to the sum of all KPI Performance Reward Amounts for that Key Result Area.
- 2.5.3 The Performance Reward Amount will be allocated amongst the NOPs in accordance with the ADA NOP Split.
- 2.5.4 The maximum aggregate of the Performance Reward Amounts that the Owner may become liable to pay the NOPs in respect of all Key Result Areas and KPIs under this ADA is equal to the sum of all KPI Maximum Reward Amounts (the **"Maximum Performance Reward Amount"**).

## 2.6 Calculation of Performance Reward Amounts and Performance Liability Amounts Upon Completion of the AD Phase

- 2.6.1 As soon as practicable after the completion of the of the AD Phase, the ALT will, or will instruct the Alliance Auditor to, calculate the Performance Reward Amount or the Performance Liability Amount (if any and as the case may be) for the AD Phase.
- 2.6.2 The Owner will make a payment to each NOP, or the NOPs will make a payment to the Owner (if any and as the case may be) in accordance with Schedule 12 (Payment Procedures).

## 2.7 Demonstrating Performance better than MCOS

- 2.7.1 There will be no payment of any Performance Reward Amount to the NOPs under this ADA at any time unless the NOPs can demonstrate to the Owner that the Performance Reward Amount has been calculated to reflect performance against the Key Result Areas under this ADA that is better than MCOS Performance.
- 2.7.2 If the NOPs are unable to demonstrate the matters set out in Section 2.7.1, the Owner will be entitled to adjust the payment of any Performance Reward Amount under this ADA to reflect the principles set out in relevant Sections of this Schedule 13 (Performance Incentivization Regime).

## **2.8 ADA NOP Split**

Subject to Section 3.1 of this Schedule 13 (Performance Incentivization Regime), where this Schedule 13 (Performance Incentivization Regime) refers to an amount of Performance Reward Amount or Performance Liability Amount payable to or by the NOPs (as applicable), such amount is to be allocated amongst the NOPs:

2.8.1 in accordance with the percentage shares agreed to by the ALT within forty (40) days of the ADA Commencement Date; or, failing such unanimous agreement of the ALT,

2.8.2 in the same proportion as each NOP's share of the total aggregate Fee set forth in the Estimate Approval in respect of the Project Proposal, expressed as a percentage,

(in either event, the "**ADA NOP Split**").

## **2.9 ADA NOP Risk Cap**

The maximum liability of each NOP to pay any Performance Liability Amount under this ADA is capped at, and shall not exceed a sum equal to the Maximum Performance Liability Amount ("**ADA NOP Risk Cap**").

## **3. PERFORMANCE INCENTIVIZATION ON EXPULSION OR TERMINATION**

### **3.1 Expulsion**

Where the Owner's Representative has served an Expulsion Notice on a defaulting NOP under Section 20.3 of this ADA, the defaulting NOP shall:

3.1.1 not be entitled to any Performance Reward Amount arising under this ADA which may become payable; and

3.1.2 be liable to the Owner for any Performance Liability Amount in accordance with Section 20.4 of this ADA.

In addition, any Performance Award Amount or residual unrecovered Performance Liability Amount will be distributed between the remaining NOPs (exclusive of any replacement NOP approved by the Owner) in accordance with a revised ADA NOP Split based upon the respective Fee amounts within a revised Estimate Approval (taking account of Actual Costs incurred up to the date of the Expulsion Notice and any additional Actual Costs arising in respect of the Expulsion Notice) which reflects how the remaining Services and Early Works are to be allocated between the non-defaulting NOPs, with such allocation being subject to approval by the ALT.

### **3.2 Default termination**

Where the Owner's Representative has served an Expulsion Notice pursuant to Section 20.5 of this ADA, all NOPs which are the subject of such Expulsion Notice shall not be entitled to payment of any Performance Reward Amount arising under this ADA which may become payable, without prejudice to any rights, remedies and obligations arising under this ADA arising from such Expulsion Notice.

## Annex 1 to Schedule 13 – KRAs and KPIs

### 1. Performance Spectrum

- 1.1 The Performance Incentivization Regime is based on the NOPS' performance in the KRAs determined by the Owner and measured in accordance with specific measures for each KPI set out in the below tables.
- 1.2 A performance spectrum is defined for each KPI with an associated KPS from **[REDACTED]** (Poor) to **[REDACTED]** (MCOS Performance), to **[REDACTED]** (Stretch). The performance spectrum for each KPI is defined as follows:
- 1.2.1 **Stretch Performance** – performance that exceeds MCOS Performance in accordance with the criteria for measurement defined in this Annex 1 for each KPI;
  - 1.2.2 **MCOS Performance** – performance expected by the Alliance as defined by the measures for MCOS Performance stated in this Annex 1 for each KPI; and
  - 1.2.3 **Poor Performance** – performance that fails to achieve the MCOS Performance and represents the measures for Poor Performance defined in this Annex 1 for each KPI.
- 1.3 Where the KPS for each individual KPI is:
- 1.3.1 Equal to **[REDACTED]** (Poor), a Performance Liability Amount will be payable by the NOPS to the Owner in respect of that KPI;
  - 1.3.2 Equal to **[REDACTED]** (MCOS Performance) no Performance Liability Amount is payable nor a Performance Reward Amount receivable in respect of that KPI; or
  - 1.3.3 In the range of greater than **[REDACTED]** (MCOS Performance) to **[REDACTED]** (Stretch), a Performance Reward Amount will be payable by the Owner to the NOPS in respect of that KPI.

### 2. Key Result Areas and Maximum Reward/Liability Amounts

- 2.1 The Maximum Performance Reward Amount is \$**[REDACTED]**.
- 2.2 The Maximum Performance Liability Amount is \$**[REDACTED]**.

**Table 1: KRAs and Total Maximum Reward/Liability Amounts**

The KRA Maximum Reward Amount is calculated for each KRA by multiplying the KRA Weighting % for that KRA by the Maximum Performance Reward Amount.

The KRA Maximum Liability Amount is calculated for each KRA by multiplying the KRA Weighting % for that KRA by the Maximum Performance Liability Amount.

<b>Key Result Area (KRA)</b>	<b>KRA Weighting %</b>	<b>KRA Maximum Liability Amount</b>	<b>KRA Maximum Reward Amount</b>
<b>1 Affordability and Efficiency</b>	[REDACTED]%	[\$[REDACTED]]	[\$[REDACTED]]
<b>2 Achieving the Plan</b>	[REDACTED]%	[\$[REDACTED]]	[\$[REDACTED]]
<b>Total</b>	<b>100%</b>	<b>[\$[REDACTED]]</b>	<b>[\$[REDACTED]]</b>

**Table 2: KPIs**

The KPI Maximum Reward Amount for each KPI within the respective KRA is calculated by multiplying the KPI Weighting % for that KPI by the KRA Maximum Reward Amount.

The KPI Maximum Liability Amount for each KPI within the respective KRA is calculated by multiplying the KPI Weighting % for that KPI by the KRA Maximum Liability Amount.

**KRA 1 Affordability and Efficiency**

**KPI 1.1 [REDACTED]**

Description and Measures	[REDACTED]		
		KPI Maximum Liability Amount	KPI Maximum Reward Amount
KPI Weighting:	[REDACTED]	[REDACTED]	[REDACTED]
Basis of Stretch Measurement:	[REDACTED]	Basis of Calculating KPS at Completion:	[REDACTED]
Period of Measurement:	[REDACTED]	Completion of the AD Phase	[REDACTED]
Performance Spectrum	Poor	MCOS	Stretch
	[REDACTED]	[REDACTED]	[REDACTED]
Performance Score Calculation	Measure	Key Performance Score (KPS)	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	

\*In the event that Stretch Performance under KPI 1.1 is exceeded, an ADA TOC Incentive Pool will, upon execution of the Project Alliance Agreement, be payable by the Owner to the NOPs in accordance with and subject to the terms described in Section 4 of Schedule 11 (Risk or Reward Regime) of the Project Alliance Agreement.



## KRA 2 Achieving the Plan

### KPI 2.1 [REDACTED]

Description and Measures	[REDACTED]		
		KPI Maximum Liability Amount	KPI Maximum Reward Amount
KPI Weighting:	[REDACTED]	[REDACTED]	[REDACTED]
Basis of Stretch Measurement:	[REDACTED]	Basis of Calculating KPS at Completion	[REDACTED]
Period of Measurement:	[REDACTED]	Completion:	[REDACTED]
Performance Spectrum	Poor	MCOS	Stretch
	[REDACTED]	[REDACTED]	[REDACTED]
Performance Score Calculation	Measure	Key Performance Score (KPS)	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	

**KRA 2 Achieving the Plan**

**KPI 2.2 [REDACTED]**

Description and Measures	[REDACTED]		
		KPI Maximum Liability Amount	KPI Maximum Reward Amount
KPI Weighting:	[REDACTED]	[REDACTED]	[REDACTED]
Basis of Stretch Measurement:	[REDACTED]	Basis of Calculating KPS at Completion:	[REDACTED]
Period of Measurement:	[REDACTED]	Completion:	[REDACTED]
Performance Spectrum	Poor	MCOS	Stretch
	[REDACTED]	[REDACTED]	[REDACTED]
Performance Score Calculation	Measure	Key Performance Score (KPS)	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	

**KRA 2 Achieving the Plan**

**KPI 2.3 [REDACTED]**

Description and Measures	[REDACTED]		
		KPI Maximum Liability Amount	KPI Maximum Reward Amount
KPI Weighting:	[REDACTED]	[REDACTED]	[REDACTED]
Basis of Stretch Measurement:	[REDACTED]	Basis of Calculating KPS at Completion:	[REDACTED]
Period of Measurement:	[REDACTED]	Completion:	[REDACTED]
Performance Spectrum	Poor	MCOS	Stretch
	[REDACTED]	[REDACTED]	[REDACTED]
Performance Score Calculation	Measure	Key Performance Score (KPS)	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	

## **SCHEDULE 14 FINANCIAL ESTABLISHMENT AUDIT**

### **1 INTRODUCTION**

#### **1.1 Financial Establishment Audit**

The Financial Establishment Audit will be undertaken by the Alliance Auditor appointed by the ALT.

#### **1.2 Primary Purpose**

The primary purpose of the Financial Establishment Audit is to gather sufficient information from each NOP as to:

- 1.2.1 its cost accounting structure;
- 1.2.2 its business structure and organization, including its relationship to proposed Affiliated Subcontractors;
- 1.2.3 its proposed salary costs and salary on-costs (including benefits costs);
- 1.2.4 the demarcation between Actual Costs and corporate overhead costs;
- 1.2.5 its internal systems and processes to be utilized to accurately record, track and report Actual Costs incurred in a timely manner; and
- 1.2.6 such other matters as determined by the ALT.

Each NOP will be required to participate in the Financial Establishment Audit.

**SCHEDULE 15  
GUARANTORS**

<i><b>NOP</b></i>	<i><b>Name of Guarantor(s)</b></i>	<i><b>Address of Registered Office</b></i>
<b>Kiewit-Alberici Union General Partnership</b>	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
<b>Mass. Electric Construction Canada Co.</b>	[REDACTED]	[REDACTED]
<b>WSP Canada Inc.</b>	[REDACTED]	[REDACTED]

## SCHEDULE 16 PARENT COMPANY GUARANTEE

This Guarantee is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### BETWEEN:

●, a **[corporation]** formed under the laws of ● having its head office and principal headquarters located in the **[City of Toronto]**,

(the “**Guarantor**”);

– and –

**ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a Crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011;

– and –

**METROLINX**, a non-share capital corporation continued under the *Metrolinx Act, 2006*, S.O. 2006, c.16 and a Crown agency within the meaning of the *Crown Agency Act*, R.S.O. 1990, c.48, as amended in accordance with Section 3 of the *Metrolinx Act, 2006* (Ontario).

**WHEREAS** Ontario Infrastructure and Lands Corporation and Metrolinx (collectively, the “**Owners**” and individually, an “**Owner**”) have entered into an alliance development agreement (the “**Alliance Development Agreement**”) with, *inter alia*, **[list Non-Owner Participants]** (collectively, the “**NOPs**”) in relation to the design and construction of certain infrastructure, as more particularly described in the Alliance Development Agreement (the “**Project**”);

**AND WHEREAS** it is a condition of the Alliance Development Agreement that **[describe specific NOP whose obligations are being guaranteed]** (the “**Guaranteed Party**”) provide a parent company guarantee from the Guarantor and that the Guarantor makes available its guarantee in consideration, *inter alia*, of the benefit the Guarantor will realize from the ownership of its subsidiary comprising one of NOPs;

**AND WHEREAS** the Guarantor hereby agrees to guarantee to the Owner the performance of the obligations of the Guaranteed Party under the Alliance Development Agreement, on the terms and subject to the conditions set forth in this Guarantee;

**NOW THEREFORE**, for and in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby covenants and agrees as follows:

1. **Interpretation.** In this Guarantee (including the Recitals), words and expressions not defined hereunder shall have the same meanings as are respectively assigned to them in the Alliance Development Agreement.
2. **Guarantee of Obligations under the Alliance Development Agreement.** In consideration of the Owner entering into the Alliance Development Agreement with the Guaranteed Party:
  - (a) the Guarantor irrevocably, absolutely and unconditionally guarantees to the Owner, as a direct obligation, the due and punctual performance by the Guaranteed Party of each and all of its obligations (including any indemnity obligations), warranties, duties, covenants and undertakings under and pursuant to the Alliance Development Agreement when and

to the extent performance of such obligations (including any indemnity obligations), duties and undertakings shall become due according to the terms of the Alliance Development Agreement and the due and punctual payment and discharge of all such sums of money and liabilities due, owing or payable and unpaid by the Guaranteed Party to the Owner pursuant to the Alliance Development Agreement or as a result of any breach of the terms of the Alliance Development Agreement by the Guaranteed Party (such obligations hereinafter collectively referred to as the “**Guaranteed Obligations**”);

- (b) the Guarantor agrees with the Owner that if and whenever at any time and from time to time, and to the extent the Guaranteed Party fails to perform any of the Guaranteed Obligations, the Guarantor shall, immediately on receipt of a written demand from the Owner notifying the Guarantor of such failure, pay, perform or discharge such obligations and liabilities, as the case may be, as if the Guarantor was a party to the Alliance Development Agreement in the place and stead of the Guaranteed Party but without regard to any defences to such performance or discharge that the Guarantor has waived, and without any obligation on the part of the Owner to marshal particular collateral or any claim or to initiate any prior action or proceeding against the Guaranteed Party or any other person;
  - (c) if and to the extent that the Guarantor, for any reason, after receiving demand pursuant to Section 2(b), does not perform, pay or discharge any of the Guaranteed Obligations in accordance with this Guarantee, the Guarantor shall indemnify the Owner in respect of any claim, demand, proceedings, liability, loss, damage, costs, charges or expenses (and any taxes arising thereon) arising out of any failure by the Guaranteed Party to perform each and all of the Guaranteed Obligations, in each case pursuant to the Alliance Development Agreement when and if such Guaranteed Obligations become due and payable or performable according to the terms of the Alliance Development Agreement, provided that the Guarantor’s liability shall be no greater than the Guaranteed Party’s liability under the Alliance Development Agreement; and
  - (d) the Guarantor shall indemnify the Owner against any loss or liability suffered by the Owner as a result of any Guaranteed Obligation being or becoming unenforceable, invalid or illegal as if the Guaranteed Obligation had not become unenforceable, invalid or illegal, provided that the Guarantor’s liability shall be no greater than the Guaranteed Party’s liability under the Alliance Development Agreement would have been if the Guaranteed Obligation had not become unenforceable, invalid or illegal.
3. **Unconditional Obligations.** The Guarantor shall not be exonerated by time being given to the Guaranteed Party by the Owner nor by any concession or arrangement or waiver or forbearance granted or made by the Owner to or with the Guaranteed Party or by anything that the Owner, the Guaranteed Party or any other party to the Alliance Development Agreement may do or omit or neglect to do (including, but without limitation, the assertion or failure or delay to assert any right or remedy of the Owner or the pursuit of any rights or remedies by the Owner or the giving by the Guaranteed Party of any security or the release, modification or exchange of any such security) which, but for this provision, might exonerate the Guarantor.
4. **Amendment of Alliance Development Agreement.** The Guarantor hereby authorizes (without need for further consent) the Owner to make any amendment, addendum or variation to the Alliance Development Agreement, the due and punctual performance of which amendment, addendum or variation shall be likewise guaranteed by the Guarantor in accordance with the terms of this Guarantee, and no such amendment shall discharge, release, reduce or impair the liability of the Guarantor hereunder nor the rights of the Owner in relation to this Guarantee.
5. **Continuing Guarantee.** This Guarantee is a continuing guarantee and shall apply to all Guaranteed Obligations whenever arising, and shall continue in full force and effect until the payment, observance and performance in full of the Guaranteed Obligations. This Guarantee is not

revocable and is in addition to and not in substitution for any other security which the Owner may at any time hold for the performance of such obligations and may be enforced against the Guarantor without first having recourse to any such security and without taking any steps or proceedings against the Guaranteed Party, any other party to the Alliance Development Agreement, any other guarantor of obligations under the Alliance Development Agreement or any other person. A separate action may be brought and prosecuted against the Guarantor whether or not any action is brought against the Guaranteed Party or any other guarantor or person and whether or not the Guaranteed Party is joined in any such action or actions. In the event that the Owner brings formal legal proceedings against the Guaranteed Party related to the Alliance Development Agreement, the Guarantor and the Owner will be bound by any final judgment made by the court including any determination of the courts in respect of the obligations of the Guaranteed Party under the Alliance Development Agreement. The obligations of the Guarantor hereunder shall not be diminished or relieved in any way as a result of any amalgamation, merger, reorganization, restructuring, sale, lease or transfer of all or substantially all assets, or similar event with respect to the Guaranteed Party or the Guarantor or any change in the ownership of any shares or other interests in the capital of the Guaranteed Party or the Guarantor and this Guarantee shall continue irrespective of: (A) any non-perfection, manner of application or disposition of any collateral or any proceeds thereof; (B) any release of any security (including any other guarantee, letter of credit or bond), waiver, renewal, extension, indulgence, compromise, amendment, addition, deletion, change, discharge (including by operation of law) or modification of or with respect to any of the Guaranteed Obligations; (C) the actual or purported assignment of any obligation or agreement arising hereunder; (D) the recovery of any judgment against the Guaranteed Party, the Guarantor or any other person, or the failure, neglect or omission on the part of the Owner or any other person to realize upon any obligations or liabilities of the Guaranteed Party; (E) any failure of the Owner to mitigate its damages; or (F) any lack of validity or enforceability of the Alliance Development Agreement, any of the Guaranteed Obligations, this Guarantee or any other guarantee except to the extent that such unenforceability or invalidity results from the default of the Owner in the performance of any of its obligations under the Alliance Development Agreement, and the liability of the Guarantor to the Owner under this Guarantee shall not be discharged except by the indefeasible payment and performance of all of the obligations of the Guarantor hereunder. The Owner may, in its sole and absolute discretion, without notice to or further assent of the Guarantor and without in any way releasing, altering, reducing, impairing, discharging or invalidating the obligations and liabilities of the Guarantor hereunder: (a) waive compliance with, performance or payment of, or default under the Alliance Development Agreement, or any Guaranteed Obligations deriving therefrom, or take or fail to take any action of any kind whether pursuant to the Alliance Development Agreement, at law or otherwise, or exercise or refrain from exercising any right or take or refrain from taking any action, against the Guaranteed Party, any other guarantor or any other person; (b) effect any release, compromise, subordination or settlement of any of the Guaranteed Obligations; (c) assign, sell, sublease or otherwise transfer any or all of its interest in the Alliance Development Agreement or in any premises to which the Alliance Development Agreement relates, subject to the terms of the Alliance Development Agreement applicable to such assignment, sale or other transfer; (d) accept, release or discharge the Guaranteed Party, any other guarantor or a permitted successor or assign of any of the foregoing or any other person; or (e) from time to time, apply any sums at any time received from the Guaranteed Party, any other guarantor or any other person in such manner, in such amounts and in satisfaction of such part of the Guaranteed Obligations as it considers best.

6. **Insolvency and other Defences.** Neither the liability of the Guarantor hereunder nor the rights of the Owner in relation to this Guarantee shall be discharged, released, reduced, impaired or affected by reason of (a) any stay of proceedings against the Guaranteed Party, any other guarantor, or any other person liable as guarantor pursuant to any law relating to bankruptcy, insolvency, restructuring or affecting creditors' rights, or (b) the winding up, dissolution, administration, incapacity, lack of power or re-organization of the Guaranteed Party or any change in its status, function, control or ownership or any lack or deficiency in the authority of any person acting on behalf of the Guaranteed Party in connection with the Guaranteed Party's obligations under the Alliance Development Agreement.



7. **Right to Payment.** In the case of the receivership, interim receivership, sequestration, administration, liquidation, winding-up, dissolution or bankruptcy of the Guaranteed Party (whether voluntary or involuntary) or any similar proceeding in respect of the Guaranteed Party for the relief from or otherwise affecting creditors of the Guaranteed Party, or in the event that the Guaranteed Party shall make any assignment for the general benefit of creditors, an arrangement, a compromise, or composition with its creditors (each an “**Insolvency Proceeding**”), the Owner shall have the right to rank, in priority to any claim by the Guarantor in such Insolvency Proceeding, for their full claims in connection with the Guaranteed Obligations and to receive all payments in respect thereof until their claims have been paid in full and the Guarantor shall continue to be liable to the Owner for the performance of the Guaranteed Obligations. If any amount shall be paid with respect to the Guaranteed Obligations to the Guarantor in connection with an Insolvency Proceeding at any time when all Guaranteed Obligations shall not have been fully satisfied, then such amount shall be used by the Guarantor solely towards performance of the unperformed Guaranteed Obligations until the Guaranteed Obligations are satisfied in full. The Guarantor shall, if called upon to perform any of the Guaranteed Obligations, have the benefit of all rights, including the right to be paid, that would be available to the Guaranteed Party had such Guaranteed Obligations been performed by the Guaranteed Party.
8. **Reinstatement.** If any payment by the Guaranteed Party in respect of the Guaranteed Obligations is avoided or annulled or must be repaid as a result of insolvency, bankruptcy or otherwise, the liability of the Guarantor will continue as if such payment had not occurred (and to the extent necessary, the guarantee of the Guarantor will automatically be reinstated). For greater certainty, the Guarantor agrees that it will remain liable for the performance in full of such obligations even if the Guaranteed Party is discharged therefrom by applicable legislation relating to bankruptcy, insolvency or reorganization.
9. **Information regarding Alliance Development Agreement.** The Guarantor assumes responsibility for being and keeping informed of the financial condition of the Guaranteed Party and of all other circumstances bearing upon the risk of non performance of the Guaranteed Obligations which diligent inquiry would reveal, and agree that the Owner shall have no duty to advise the Guarantor of information known to it now or hereafter regarding such condition or any such circumstances except as may be required in any legal proceeding.
10. **Interest.** To the extent that interest is payable in accordance with the Alliance Development Agreement, the Guarantor must pay on demand, on all sums payable under this Guarantee, interest at the Default Interest Rate (as such term is defined in the form of Project Alliance Agreement attached as Schedule 18 (Form of Project Alliance Agreement) to the Alliance Development Agreement), provided that such interest will not be in duplication of any interest payable pursuant to the Alliance Development Agreement and claimed hereunder.
11. **No Withholding.** All sums payable under this Guarantee shall be paid in full free and clear of and without deduction of or withholding for or on account of any present or future taxes, duties and/or other charges.
12. **Representations and Warranties.** The Guarantor represents and warrants to the Owners as follows:
  - (a) the Guarantor is duly [**incorporated**] and validly existing and in good standing under the laws of [●];
  - (b) the execution, delivery and performance of this Guarantee do not and will not (i) violate any provision of the constating documents or by-laws of the Guarantor or (ii) violate or constitute any default under any indenture, mortgage, chattel mortgage, security agreement, deed of trust, conditional sales contract, lease, loan or other material agreement, instrument or document to which the Guarantor is a party or by which the

Guarantor or any of its assets is bound, or (iii) constitute a default under any law, governmental rule, regulation, judgment or order binding on the Guarantor;

- (c) this Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes the Guarantor's legal, valid, binding and enforceable obligations except to the extent enforceability may be limited by bankruptcy and insolvency laws;
- (d) no event has occurred which constitutes, or which with the giving of notice and/or the lapse of time and/or a relevant determination would constitute, a contravention of, or default under, any agreement or instrument by which the Guarantor or any of its assets is bound or affected;
- (e) the claims of the Owner against it under this Guarantee will rank at least pari passu with the claims of all the Guarantor's other unsecured creditors, save those whose claims are mandatorily preferred solely by Applicable Law;
- (f) there are no actions, suits or proceedings pending (nor to the best knowledge of the Guarantor, after due inquiry, is there any pending investigation) against or involving the Guarantor at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or before or by any arbitrator of any kind, which could reasonably be expected to materially and adversely affect or impair the ability of the Guarantor to perform its obligations under this Guarantee and the Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which could reasonably be expected to materially and adversely affect or impair the ability of the Guarantor to perform its obligations under this Guarantee;
- (g) no action or approval, authorization, consent or other order of, and no designation, filing, further registration, qualification or recording with, any governmental or public body or authority is legally required to authorize or is otherwise required in connection with or for the execution, delivery or performance by the Guarantor of this Guarantee except as has already been obtained;
- (h) after giving effect to the transactions contemplated in this Guarantee, it is not nor would be deemed insolvent, nor does its incurrence of contingent obligations under this Guarantee render it insolvent; and
- (i) it has not taken any mortgage, pledge, charge, lien, debenture, deed of trust, hypothec, assignment by way of security, security interest, conditional sales contract, option, pre-emptive right or other title retention agreement or similar interest or instrument charging or creating a security interest in property or assets, or any other part thereof or interest therein, from the Guaranteed Party for or in consideration of assuming any of its obligations under this Guarantee.

The Guarantor acknowledges that the Owners have executed this Guarantee and agreed to take part in the transactions that this Guarantee contemplates in reliance on the representations and warranties made by the Guarantor in this Section 1212 of this Guarantee.

The representations made by the Guarantor in this Section 1212 will survive the execution of this Guarantee.

13. **Subrogation.** At any time while any payment is payable or obligation is owed by the Guaranteed Party under the Alliance Development Agreement or by the Guarantor under this Guarantee, the Guarantor shall not:
- (a) be subrogated to any rights, security or moneys held, received or receivable by the Owners or be entitled to any right against the Guaranteed Party of contribution or indemnity that would be in competition with the Owner in respect of any payment made by the Guarantor or moneys received by the Owner under this Guarantee; or
  - (b) claim, rank, prove, vote or exercise any other rights as a surety or creditor of the Guaranteed Party or its estate in competition with the Owner; or
  - (c) take any steps to enforce a right or claim against the Guaranteed Party relating to any money paid by the Guarantor to the Owner under this Guarantee; or
  - (d) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any right of the Guaranteed Party under any agreement or document to which the Owner is a party (except as set out herein in relation to the Alliance Development Agreement).
14. **Communications.** Any notice or demand (a "**Communication**") hereunder shall be duly signed by or on behalf of a duly authorized officer of the person giving the Communication and delivered by hand or by facsimile transmission, in each case with a copy by electronic transmission, to the following addresses:

**To the Guarantor:**

Address: ●  
Fax No: ●  
Phone No: ●  
Email: ●  
Attention: ●

**To Ontario Infrastructure and Lands Corporation:**

Address: Suite 2000, 1 Dundas Street West, Toronto, Ontario M5G1Z3  
Fax No: ●  
Phone No: [REDACTED]  
Email: [REDACTED]  
Attention: [REDACTED]

**To Metrolinx:**

Address: 97 Front St W, Toronto, Ontario, M5J 1E6  
Fax No: ●  
Phone No: ●  
Email: ●  
Attention: ●

Any party may change its address for Communication to another address by prior Communication in writing to the other party.

Any Communication shall be deemed to have been received:

- (a) if hand delivered, when delivered;

(b) if sent by facsimile, upon sending, subject to confirmation of uninterrupted transmission by a transmission report.

15. **Currency.**

- (a) If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder to the Owner in one currency (the "**Original Currency**") into another currency (the "**Judgment Currency**"), the Guarantor agrees, to the fullest extent that it may effectively do so under Applicable Law, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Owner could purchase the Original Currency with the Judgment Currency on the Business Day preceding that on which final judgment is paid or satisfied.
- (b) The obligations of the Guarantor in respect of any sum due in the Original Currency from it to the Owner under this Guarantee shall, notwithstanding any judgment in any Judgment Currency, be discharged only to the extent that, on the Business Day following receipt by the Owner of any sum adjudged to be so due in such Judgment Currency, it may in accordance with normal banking procedures purchase the Original currency with such Judgment Currency. If the amount of the Original Currency so purchased is less than the sum originally due to the Owner in the Original Currency, the Guarantor agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Owner against such loss and, if the amount of the Original Currency so purchased exceeds the sum originally due to the Owner in the Original Currency, it shall remit such excess to the Guarantor.

16. **Tax Gross-Up.**

- (a) All payments required to be made by the Guarantor hereunder shall be made to the Owner, free and clear of, and without deduction or withholding for, any and all present and future Taxes (other than any Taxes the Guaranteed Party would have been required to deduct or withhold had the payment been made by the Guaranteed Party). If as a result of this Guarantee the Guarantor shall be required by law to deduct any Taxes from or in respect of any sum payable hereunder (other than any Taxes the Guaranteed Party would have been required to deduct or withhold had the payment been made by the Guaranteed Party), (i) the sum payable shall be increased as much as shall be necessary so that after making all required withholdings and deductions (including withholdings and deductions applicable to additional sums payable under this Section 16) the Owners receives an amount equal to the sum they would have received had no such withholdings or deductions been made, (ii) Guarantor shall make such withholdings and deductions, (iii) Guarantor shall pay the full amount withheld or deducted to the relevant taxing or other governmental authority in accordance with Applicable Law and (iv) the Owner will commercially reasonable efforts to obtain any refunds or credits obtainable in respect of any amount paid under (iii) above by the Guarantor to be obtained and reimbursed to the Guarantor.
- (b) In addition, the Guarantor hereby agrees to indemnify and, within five (5) Business Days of demand therefor, pay the Owner for the full amount of Taxes (excluding Excluded Taxes (as such term is defined below) except for Excluded Taxes imposed on any amount paid pursuant to this Section 16) paid by the Owner, other than any Taxes the Owner would have been required to pay had the payment been received from the Guaranteed Party.
- (c) For the purposes hereof, "Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any governmental authority, including any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under this Guarantee or from the execution, delivery or enforcement of, or otherwise with respect to, this Guarantee and interest thereon or penalty with respect thereto and "**Excluded**

**Taxes**” means any taxes based on the net income of the Owner (including franchise taxes imposed in lieu of net income taxes) imposed by (i) the Canadian federal government, or (ii) the jurisdiction where such party is organized or has its principal office.

17. **Amendments and Waivers.** No term or provision of this Guarantee may be changed, modified, amended, waived, discharged or terminated, except by an instrument in writing signed by each party hereto.
18. **Further Assurances.** The Guarantor covenants that, upon demand from the Owner, it will perform all acts and execute all deeds and documents reasonably necessary to give full effect to the provisions hereof and to ensure that this Guarantee will be at all times enforceable against the Guarantor in accordance with its terms.
19. **Severability.** The invalidity, illegality or unenforceability in whole or in part of any of the provisions of this Guarantee shall not affect the validity, legality and enforceability of the remaining part or provisions of this Guarantee.
20. **Governing Law.** This Guarantee shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and all actions or proceedings in respect of any claim arising out of or related to this Guarantee, whether in contract, at law or in equity, shall be brought in the courts of the Province of Ontario.
21. **Counterparts.** This Guarantee may be executed in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument; any party may execute this Guarantee by signing any counterpart of it and may communicate such signing by telecopier or otherwise.
22. **Successors and Assigns.** This Guarantee shall be binding upon the Guarantor and its successors and permitted assigns and shall ensure to the benefit of the Owner and their respective successors and assigns.

*[signature page to follow]*

**IN WITNESS WHEREOF** this Guarantee has been executed and delivered by the Guarantor as of the date first written above.

●, as Guarantor

Per: \_\_\_\_\_

Name:

Title:

I have the authority to bind the  
**[corporation]**

Acknowledged and accepted:

**ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**, a crown agent, continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

**METROLINX**

Per: \_\_\_\_\_

Name:

Title:

*(Signature Page of Parent Guarantee)*

## **SCHEDULE 17 RAIL CORRIDOR ACCESS**

1. **Standards.** Rail corridor construction access will be managed in accordance with the following:
  - a. the Metrolinx USRC Access Standard, including the reference documents and appendices referred to therein;
  - b. the Metrolinx Delivering Work Within Possessions (DWWP) Standard;
  - c. the Metrolinx Rules of the Route applicable to the proposed possession;
  - d. the Metrolinx Safety Charter;
  - e. the Canadian Rail Operating Rules (CROR);
  - f. the Metrolinx CSMP;
  - g. the GO Transit Track Worker Safety Instructions (TWSI)
  - h. the Metrolinx Union Station Rail Corridor Parking Management Guidelines;
  - i. the Metrolinx Work Plan Methodology Template (WPM);
  - j. the USRC Gate Access requirements;
  - k. the applicable entry, access and transit protocols required by adjacent third party property owners; and
  - l. any other applicable Authority Requirements.
2. **Construction Schedules and Possessions.** In accordance with the Metrolinx USRC Access Standard, possession requests within the USRC must follow the T-8 planning timeline. For the purpose of undertaking Early Works during the AD Phase, the NOPs will be permitted to submit possession requests for work between T-3 weeks and T-8 weeks, subject to availability around existing planned works in the USRC.
3. **Protection of Infrastructure.** When any activities are undertaken on or about the rail infrastructure within the limits of the USRC, the NOPs and any NOP Parties shall protect existing track and signal infrastructure (including signal troughs) from damage, and they shall install and maintain track planking in accordance with the GO Transit Track Standards for off track vehicle pathways, except as otherwise specifically approved by Metrolinx in writing.
4. **Gate Access.** The following general requirements apply to any Early Work or site investigation that requires gate access to the USRC:
  - a. The Owner shall take steps to provide gate access and, as far as possible, provide exclusive access for NOPs to perform Early Works and site investigations.
  - b. Other than when personnel or vehicles are passing through an access gate, access gates shall be locked and all accesses shall be monitored by video surveillance.
  - c. Access through the gates must be managed full time by a CROR qualified flag person.

- d. Vehicle movements within the USRC shall follow the requirements of the Metrolinx CSMP and must be within dedicated areas which are separated from active areas of the USRC by barriers including temporary concrete (jersey type) barriers designed to prevent truck, equipment and personnel passage, except at locations required for rail corridor service or emergency access.
5. **Track Access and Compensation Costs.** The Owner Participant shall from time to time submit to the ALT a table of costs, expenses and liabilities (as applicable) incurred by the Owner in respect of the matters set forth in Section 1.4 of Annex 2 to Schedule 4 (Actual Cost) ("**Track Access and Compensation Costs**"). Such Track Access and Compensation Costs shall reflect a reasonable pre-estimate of the actual costs, expenses and liabilities to be incurred by the Owner, based upon prior occurrences of the matters set forth in Section 1.4 of Annex 2 to Schedule 4 (Actual Cost), anywhere on the Network generally and not restricted to the Project. The ALT may request the Alliance Auditor to review such Track Access and Compensation Costs and confirm that they generally reflect the cost components noted in Section 1.4 of Annex 2 to Schedule 4 (Actual Cost).



**SCHEDULE 18  
FORM OF PROJECT ALLIANCE AGREEMENT**

**[REDACTED]**