

**AMENDED AND RESTATED
SERVICES AGREEMENT**

**HIGHWAY 407 EAST
TOLLING AND BACK OFFICE SERVICES**

CONFIDENTIAL

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THIS AMENDED AND RESTATED SERVICES AGREEMENT (this “**Services Agreement**”) is made as of the 7th day of October, 2015

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Economic Development, Employment and Infrastructure, as represented by the Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended

(“**Owner**”)

AND:

CANADIAN TOLLING COMPANY INTERNATIONAL INC., a corporation existing under the laws of Canada

(“**Service Provider**”)

WHEREAS:

- A. The Province is planning construction of Highway 407 East, easterly from the eastern terminus of 407ETR to Highway 35/115, as well as Highway 412 and Highway 418 (“**Highway 407 East**”).
- B. Upon proclamation of the 407 East Act, Highway 407 East was designated as a tolled provincial highway with the Province retaining the toll revenue.
- C. The Province will retain control, management and operation of Highway 407 East, and will control the toll rates, fees, and interest rate for late payments on Highway 407 East.
- D. Service Provider will provide the Project Operations, which Project Operations include the design, construction and maintenance of the tolling equipment and providing tolling and back office services as further set out herein (the “**Project**”).
- E. Service Provider and Owner entered into a service agreement dated November 15, 2011 (the “**Original Services Agreement**”) for certain services to be provided with respect to Highway 407 East from the eastern terminus of 407ETR to Harmony Road and Highway 412.
- F. Since executing the Original Services Agreement, the Parties have agreed to amend certain provisions of the Original Services Agreement including to provide certain services with respect to Highway 407 East from Harmony Road to Highway 35/115 and Highway 418.

G. In order to incorporate these changes, the Parties wish to amend and restate the terms and conditions of the Original Services Agreement, in accordance with Section 55.1 of the Original Services Agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) This Services Agreement shall be interpreted in accordance with Schedule 1 - Definitions and Interpretation.
- (b) This Services Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Services Agreement:

Schedule No.	Description
Schedule 1	- Definitions and Interpretation
Schedule 2	- 407 East Maps
Schedule 3	- Service Provider Information
Schedule 4	- Tolling Infrastructure Works
Schedule 5	- [Reserved]
Schedule 6	- Independent Certifier Agreement
Schedule 7	- Key Individuals
Schedule 8	- Review Procedure
Schedule 9	- Outline Commissioning Program
Schedule 10	- Title Encumbrances
Schedule 11	- Works Schedule
Schedule 12	- Communications Protocol
Schedule 13	- [Reserved]
Schedule 14	- Payment Mechanism
Schedule 15	- Variation Procedure
Schedule 16	- Compensation on Termination
Schedule 17	- [Reserved]
Schedule 18	- Insurance Requirements
Schedule 19	- Record Provisions
Schedule 20	- Dispute Resolution Procedure
Schedule 21	- Future Toll Road Opportunities
Schedule 22	- Termination/Expiry Services
Schedule 23	- Partial and Settlement Payments
Schedule 24	- Miscellaneous Payment Procedures
Schedule 25	- Initial Target Price and Base Progress Payments
Schedule 26	- User Fee Protocol

Schedule No.	Description
Schedule 27	- Owner Deliverables
Schedule 28	- Output Specifications

- (c) The documents comprising this Services Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of conflict, in which case Section 1.2 shall apply.
- (d) The intent of this Services Agreement is to include the labour, products and services necessary for the performance of the Project Operations by Service Provider in accordance with this Services Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the Sole Discretion of Owner, no consent, approval or satisfaction of Owner shall be unreasonably withheld or delayed. If it is specifically provided that a consent, approval or satisfaction may be given or withheld in the Sole Discretion of Owner, it may be given or withheld in the sole, absolute and unfettered discretion of Owner, which may be arbitrarily exercised without any requirement to provide reasons or explanations, whatsoever (“**Sole Discretion**”).

1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Services Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently unless otherwise expressly provide therein or herein:
 - (i) the provisions of amendments in writing to this Services Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Services Agreement expressly amended thereby;
 - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
 - (iii) the body of this Services Agreement;
 - (iv) Schedule 1 Definitions and Interpretation;
 - (v) Schedule 20 Dispute Resolution Procedure;
 - (vi) Schedule 28 Output Specifications;
 - (vii) Schedule 27 Owner Deliverables;
 - (viii) Schedule 4 Tolling Infrastructure Works;
 - (ix) Schedule 25 Target Price and Base Progress Payments;

- (x) Schedule 14 Payment Mechanism;
 - (xi) Schedule 26 User Fee Protocol;
 - (xii) Schedule 23 Partial and Settlement Payments;
 - (xiii) Schedule 24 Miscellaneous Procedures;
 - (xiv) Schedule 9 Outline Commissioning Program;
 - (xv) Schedule 18 Insurance Requirements;
 - (xvi) Schedule 8 Review Procedure;
 - (xvii) Schedule 22 Termination/Expiry Services;
 - (xviii) Schedule 16 Compensation on Termination;
 - (xix) Schedule 19 Record Provisions;
 - (xx) Schedule 15 Variation Procedure;
 - (xxi) the other Schedules in the order in which they are listed in Section 1.1(b); and
 - (xxii) written descriptions and words shall govern over graphic depictions.
- (b) If the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Service Provider or Owner, upon discovery of same, shall immediately give notice to the Owner Representative. The Owner Representative shall, within ten Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Service Provider.
- (d) Owner and Service Provider shall comply with the determination of the Owner Representative pursuant to this Section 1.2 unless Owner or Service Provider disputes the decision of the Owner Representative in which event such Dispute may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

1.3 Legal Requirements

- (a) Whenever standards of Applicable Law differ, the most stringent standards shall govern.

2. TERM AND EXTENSION

2.1 Term

- (a) The term of this Services Agreement will commence on the Effective Date and expire at midnight on the Termination Date, except as contemplated by Section 42.9 (the “Project Term”). The Parties agree that the representations and warranties set out in Section 5.1 and Section 5.2 of the Original Services Agreement will continue to apply as and from the Effective Date and the representations and warranties set out in Section 5.1 and Section 5.2 of this Services Agreement will apply as and from the Amended and Restated Effective Date.

2.2 Extension

- (a) The Expiry Date shall automatically be extended by no more than two additional periods of ten years each. Either Party, in its sole discretion, may elect to not extend the Expiry Date, by providing the other Party with written notice that the Services Agreement is not to be automatically extended, by the 5th anniversary of the Phase 1 Substantial Completion Date, and if the Services Agreement has been extended, by the end of the 5th year of any extension term.
- (b) Owner and Service Provider agree that, subject to Schedule 14 – Payment Mechanism, the rates comprising the Gross Monthly Service Payment shall apply to the initial Project Term only. In the event of a potential extension of the Project Term pursuant to Section 2.2(a), Owner and Service Provider shall, in good faith and acting reasonably, commence negotiations to determine whether the Toll System Field Equipment requires refreshing or updating, the rates comprising the Gross Monthly Service Payment that will apply to the applicable extension term and any other terms and conditions of this Services Agreement no later than 5 years and six months prior to the expiry of (i) the initial Project Term or (ii) any extension term. Owner and Service Provider agree that the negotiations under this Section 2.2(b) shall consist of the exchange at least one good faith proposal and counter-proposal, if necessary, in respect of the rates comprising the Gross Monthly Service Payment and any other terms and conditions. Owner and Service Provider agree that no extension of the Project Term under Section 2.2(a) shall be effective in the absence of a written agreement between Owner and Service Provider with respect to the rates comprising the Gross Monthly Service Payment or any other term and condition. In the event that there is no written agreement between Owner and Service Provider with respect to the rates comprising the Gross Monthly Service Payment or any other term and condition for an extension term by the end of the 5th year of the initial Project Term or extension term, as applicable, both Parties will be deemed to have given written notice to the other electing not to extend this Services Agreement in accordance with Section 2.2(a).

2.3 Assignment of Services Agreement to Minister

- (a) Notwithstanding the commencement of the Effective Date in Section 2.1(a), the Parties acknowledge and agree that notwithstanding Section 22.1 or any other provision of this

Services Agreement, Service Provider may not, and shall not be obligated to, perform the Service Provider Services directly related to the collection of tolls from users of Highway 407 East until the Service Provider and the Minister (as that term is defined under the 407 East Act) enter into an agreement (through the amendment or assignment of this Agreement, or otherwise) providing evidence that Section 14 of the 407 East Act has been complied with. The Parties shall do all things, from time to time, to give full effect to this Section including, *inter alia*, executing any documents to acknowledge a partial assignment or otherwise comply with Section 14 of the 407 East Act.

3. SCOPE OF AGREEMENT

3.1 Scope of Agreement

- (a) Subject to Section 2.3, Service Provider shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Services Agreement.
- (b) Service Provider's sole recourse to Owner with respect to the subject matter of this Services Agreement shall be to Owner as agent of the Province.

3.2 Service Provider Parties

- (a) Notwithstanding Section 8.2 or any other provision in this Services Agreement, any reference to obligations of, or in respect of, a Service Provider Party who as of the Effective Date is a party with whom Service Provider has an existing contractual relationship (other than 407 ETR Limited) such obligations of Service Provider or such Service Provider Party will only apply with a Service Provider Party (other than 407 ETR Limited) that expressly agrees in writing to be bound by such obligations.
- (b) Service Provider agrees to use commercially reasonable efforts to cause any Service Provider Party that as of the Effective Date is a party with whom Service Provider has an existing contractual relationship (other than 407 ETR Limited) to agree to such terms upon the entering into of any new agreement or amendment of any current agreement with such Service Provider Party that occurs after the Effective Date. For clarity, purchases made from an existing Service Provider Party will not be considered to be the entering into of a new agreement without the amendment of a current agreement with such Service Provider Party.

4. BUSINESS OPPORTUNITIES

4.1 Business Opportunities

- (a) Service Provider acknowledges that Owner reserves the right to all commercial and other opportunities (including, for greater certainty, rental of fibre optic cables, all retail and marketing operations) in the Toll System Field Equipment, the categories (a) and (b) of the defined term Project Data and at the Site and that Service Provider has no commercial rights or opportunities whatsoever in the Toll System Field Equipment, the category (b) of the defined term Project Data and the Site beyond the performance of the Project Operations.

- (b) In the event Owner determines in its Sole Discretion that the Service Provider's Service Provider Services and Service Provider Intellectual Property may be adopted on future toll roads in Ontario, Owner and Service Provider shall negotiate an agreement pursuant to the terms set out in Schedule 21 – Future Toll Road Opportunities.

5. REPRESENTATIONS AND WARRANTIES

5.1 Service Provider Representations and Warranties

- (a) Service Provider represents and warrants to Owner that as of the Amended and Restated Effective Date:
- (i) Service Provider is a corporation existing under the laws of Canada, is in good standing with respect to the filing of annual returns under the *Canada Business Corporations Act*, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Services Agreement and to perform its obligations hereunder;
 - (ii) Service Provider and the Service Provider Parties, collectively, have extensive experience and are knowledgeable in all aspects of the Project Operations and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Services Agreement;
 - (iii) Service Provider has the requisite power, authority and capacity to execute and deliver and perform this Services Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Services Agreement to be done, executed, delivered or performed;
 - (iv) Service Provider has obtained or will, prior to commencing the Works, have obtained all necessary Permits, Licences and Approvals required to commence the Works;
 - (v) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would impair or limit its ability to perform its obligations under this Services Agreement;
 - (vi) this Services Agreement has been duly authorized, executed, and delivered by Service Provider and constitutes a legal, valid, and binding obligation of Service Provider enforceable against Service Provider in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vii) the authorization, execution, delivery, and performance by Service Provider of this Services Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating, formation or organizational documents, including any by-laws, or any unanimous shareholders agreement or similar rights agreement binding on Service Provider; or
 - (B) any covenant, contract, instrument, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii.1) the authorization, execution, delivery, and, subject to section 2.3, performance by Service Provider of this Services Agreement does not and will not violate or conflict with, or constitute a default under any Applicable Law;
- (viii) no Service Provider Event of Default has occurred and is continuing;
- (ix) all of the information regarding Service Provider set out in Schedule 3 – Service Provider Party Information is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or, to the Service Provider’s knowledge, threatened against Service Provider and, to Service Provider’s knowledge, there are no actions, suits, proceedings, or investigations pending or threatened against any Service Provider Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) 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 Service Provider or in any impairment of Service Provider's ability to perform its obligations under this Services Agreement, and Service Provider 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 would result in any such material adverse effect or impairment;
- (xi) Service Provider has carefully reviewed the whole of this Services Agreement and the Background Information made available to Service Provider by or on behalf of Owner, and, to Service Provider’s knowledge, nothing contained herein or therein inhibits or prevents Service Provider from completing the Works or performing the Project Operations in accordance with this Services Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Services Agreement;
- (xii) Service Provider is able to meet its obligations as they generally become due;

- (xiii) Service Provider is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and has been assigned HST registration number [Redacted];
- (xiv) Service Provider is not, and will not be, a Non-Resident and has, and will have, no obligation to file income tax returns in any jurisdiction outside Canada;
- (xv) if Service Provider is a non-resident contractor as defined in section 1 of the *Retail Sales Tax Act* (Ontario) Regulation 1013, Service Provider has deposited with the Ontario Minister of Finance the appropriate security in respect of any tangible Personal property consumed or used in the construction of the Toll System pursuant to subsection 39(3) of the *Retail Sales Act* (Ontario); and
- (xvi) the Scheduled Phase 2a Substantial Completion Date and the Scheduled Phase 2b Substantial Completion Date are realistic dates and are achievable by Service Provider performing the Works in accordance with this Services Agreement.

5.2 Owner Representations and Warranties

- (a) Owner represents and warrants to Service Provider that as of the Amended and Restated Effective Date:
 - (i) IO is a non-share capital corporation continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, and has all the requisite corporate power and authority to carry on its business as it is currently being conducted, and to enter into this Services Agreement as delegate for MEDEI;
 - (ii) subject to Section 5.2(a), as applicable, IO is entering into this Services Agreement as delegate for MEDEI and has the requisite power, authority and capacity to execute and deliver and perform the obligations of MEDEI on its behalf, as delegate, under this Services Agreement and to bind the Province to this Services Agreement, and Service Provider is entitled to rely upon IO's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by IO, as delegate for MEDEI, that are required by this Services Agreement to be done, executed, delivered or performed by MEDEI;
 - (iii) the Province has obtained all necessary approvals to enter into and perform its obligations under this Services Agreement.
 - (iv) this Services Agreement has been duly authorized, executed, and delivered by Owner and constitutes a legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments; and
- (C) Section 11.3 of the *Financial Administration Act*;
- (v) the authorization, execution, delivery, and performance by the Province of this Services Agreement does not and will not violate or conflict with, or constitute a default under:
 - (A) the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended, or any regulations made in respect thereof;
 - (B) the *Executive Council Act* (Ontario) or any regulations made in respect thereof; or
 - (C) any covenant, contract, instrument, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (v.1) the authorization, execution, delivery, and, subject to section 2.3, performance by Service Provider of this Services Agreement does not and will not violate or conflict with, or constitute a default under any Applicable Law;
- (vi) no Owner Event of Default has occurred and is continuing;
- (vii) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of Owner, threatened against Owner at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which Owner 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 Owner or in any impairment of its ability to perform its obligations under this Services Agreement, and Owner is not aware of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment;
- (viii) the Province is able to meet its obligations as they generally become due;
- (ix) Owner has rights of use and access to, on and over the Site or has the requisite power to obtain such rights that are sufficient to enable Owner to grant or to cause to be granted to Service Provider the licence rights contemplated in Section 11.1; and
- (x) the Province is the registered owner of, and has good title in fee simple to, the Site, subject only to the Title Encumbrances.

5.3 Disclaimer

EXCEPT AS SPECIFICALLY SET FORTH IN THIS SERVICES AGREEMENT, THERE ARE NO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF EITHER PARTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. BACKGROUND INFORMATION

6.1 No Liability

- (a) Except as expressly provided in Sections 13.1 and 13.2, neither Owner nor any other Government Entity shall be liable to Service Provider for, and Service Provider shall not seek to recover from Owner, or any other Government Entity or any Owner Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Service Provider or any Service Provider Party.

6.2 No Warranty

- (a) Except as expressly provided in Sections 13.1 and 13.2:
 - (i) Neither Owner nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Owner nor any Government Entity warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the negotiations for the Project or at the time of execution and delivery of this Services Agreement) relevant or material to or in connection with the Project or the obligations of Service Provider under this Services Agreement; and
 - (ii) Neither Owner nor any Government Entity shall be liable to Service Provider in respect of any failure, whether before, on or after the execution and delivery of this Services Agreement:
 - (A) to disclose or make available to Service Provider any information, documents or data;
 - (B) to review or update the Background Information; or
 - (C) to inform Service Provider of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

6.3 No Claims

- (a) Service Provider acknowledges and confirms that:

- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Services Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
- (ii) except as expressly provided in Sections 13.1 and 13.2, it shall not be entitled to and shall not, and shall ensure that no Service Provider Party shall, make any claim against Owner, any Government Entity or any Owner Party (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Services Agreement on the grounds:
 - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
 - (B) that the Background Information was incorrect or insufficient,nor shall Service Provider be relieved from any of its obligations under this Services Agreement on any such ground.

7. OWNER RESPONSIBILITIES

7.1 General

- (a) Owner shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, this Services Agreement in compliance with Applicable Law;
 - (ii) comply with all Permits, Licences and Approvals in accordance with their terms;
 - (iii) cooperate with Service Provider in the fulfillment of the purposes and intent of this Services Agreement, provided, however, that Owner shall not be under any obligation to perform any of Service Provider's obligations under this Services Agreement; and
 - (iv) provide the Owner Deliverables.
- (b) Owner shall, and shall cause all Owner Parties and other Government Entities to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Service Provider or any Service Provider Party.
- (c) Nothing in this Services Agreement shall in any way fetter the right, authority and discretion of any Owner Party or other Government Entity in fulfilling its statutory or other functions under Applicable Law, and Service Provider understands and agrees that nothing in this Services Agreement shall preclude Owner from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Service Provider further agrees that it shall comply, and shall cause all relevant Service Provider

Parties to comply, with all written directions issued by or on behalf of Owner from time to time, subject to Section 33.1(b).

7.2 Highway 407 East

- (a) Owner and the Owner Parties shall be responsible for the design, construction and maintenance of Highway 407 East. Owner shall be responsible for whether to proceed with Highway 407 East. Owner and the Owner Parties shall construct Highway 407 East in phases, with additional highway lanes and interchanges being constructed on Highway 407 East as traffic demand warrants. Owner shall retain ownership, control, management and operation of Highway 407 East and all rights ancillary thereto. Owner shall control the toll rates, fees and interest rate for late payments in respect of users of Highway 407 East.

8. SERVICE PROVIDER RESPONSIBILITIES

8.1 General

- (a) Service Provider shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Services Agreement in compliance with Applicable Law;
 - (ii) perform all Project Operations:
 - (A) in compliance with Applicable Law;
 - (B) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
 - (C) in compliance with the Data Collection and Retention Procedures and Reports;
 - (D) so as to satisfy the Output Specifications;
 - (E) in accordance with Good Industry Practice;
 - (F) in a timely and professional manner;
 - (G) with due regard to the health and safety of Persons and property;
 - (H) subject to the other provisions of this Services Agreement, in a manner which will not impair the ability of Owner, the Owner Parties or any other Government Entity to comply with Applicable Law;
 - (I) subject to the other provisions of this Services Agreement, in a manner which will not impair the performance or the ongoing operation of the Toll System; and

- (J) in accordance with all other terms of this Services Agreement.
- (iii) cooperate with Owner in the fulfillment of the purposes and intent of this Services Agreement, provided however that Service Provider shall not be under any obligation to perform any of Owner's obligations under this Services Agreement.

8.2 Liability Unaffected

- (a) Service Provider shall not be relieved of any liability or obligation under this Services Agreement by the retainer or appointment of any Service Provider Party, and Service Provider shall cause each Service Provider Party, to the extent such Service Provider Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Service Provider hereunder in the same manner and to the same extent as Service Provider. Service Provider shall ensure that all of Service Provider Parties are subject to Subcontracts that are consistent with Service Provider's obligations hereunder.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of this Services Agreement by Owner, the Owner Representative, or anyone on their behalf, nor any failure of any of them to do so, shall relieve Service Provider from performing or fulfilling any of its obligations under this Services Agreement or be construed as an acceptance of the Work or any part thereof.

8.3 Permits, Licences and Approvals

- (a) Service Provider shall, at its own cost and risk:
 - (i) obtain, maintain, pay for (including all fees and deposits) and, as applicable, renew all Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
 - (ii) give the required notices and comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on Owner or any Owner Party, Service Provider shall not obtain such Permits, Licences and Approvals without the prior written consent of Owner and the relevant Owner Party, not to be unreasonably withheld or delayed, provided that neither Owner nor any Owner Party shall be responsible for obtaining or for the failure of Service Provider to obtain any Service Provider Permit, Licence or Approval. Owner shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Owner or any Owner Party by the requirements of any Service Provider Permit, Licence and Approval obtained with consent under this Section 8.3(b).

- (c) Owner shall provide Service Provider with such information and administrative assistance as Service Provider may reasonably require in relation to the Permits, Licences and Approvals.

8.4 Safety During the Project Operations

- (a) From the Effective Date until the Termination Date, Service Provider shall:
 - (i) comply with the Safety Plan;
 - (ii) review, update and submit a revised Safety Plan to Owner annually;
 - (iii) keep the Works and the Toll System in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to Persons in respect of the Toll System;
 - (iv) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Toll System of any Persons or creatures not entitled to such access;
 - (v) comply with all Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
 - (vi) provide Owner with a certificate of good standing from the Ontario Workplace Safety and Insurance Board or any successor thereto once every 90 days.

8.5 Highway 407 East Construction and Additional Works

- (a) Service Provider shall be responsible for integrating or causing the integration of the Works with the Highway 407 East Construction and with the Owner Parties selected to perform the Highway 407 East Construction. Service Provider shall permit work by Owner Parties, acting reasonably, affecting the Toll System that relate to the Works (the “**Tolling Infrastructure Works**”).
- (b) Where the CGLA identifies any Works on the 407ETR right of way as Works to be completed by the Service Provider or a Service Provider Party, Service Provider shall pay, or cause such Service Provider Party to pay, the full cost of such Works.
- (c) In connection with the Highway 407 East Construction and the Tolling Infrastructure Works, Service Provider shall:
 - (i) be responsible for developing and providing the complete specifications relating to the Tolling Infrastructure Works in accordance with the terms of this Services Agreement;
 - (ii) participate in the design development process in respect of the Tolling Infrastructure Works portions of the Highway 407 East Construction, as Owner

shall direct from time to time, consistent with the obligations delineated in Schedule 4 - Tolling Infrastructure Works. The Parties acknowledge that (i) Owner agreed to provide a copy of the design for Phase 1 of the Highway 407 East as at the time when Owner and the Owner Party reached Financial Close pursuant to the Project Agreement in respect of the design, construction, financing and maintenance of the Highway 407 East, and (ii) Service Provider shall receive and Owner shall provide within 30 days of the Amended and Restated Effective Date a copy of the design for Phase 2a and Phase 2b of the Highway 407 East as at the time when the Owner and the Owner Party reached Financial Close pursuant to the Project Agreement in respect of Phase 2a and Phase 2b of the design, construction, financing and maintenance of the Highway 407 East;

- (iii) comply and cause Service Provider Parties to comply with the instructions of the Owner Party acting as the “constructor” under the *Occupational Health and Safety Act* (Ontario) relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Highway 407 East Construction with the Works during the performance of the Works;
 - (iv) enter into separate contracts with Service Provider Parties under conditions of contract which are compatible with the conditions of this Services Agreement and provide for compliance by Service Provider Parties with Section 8.5(c) and all directions of such Owner Party in respect of any matter regarding health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Highway 407 East Construction during the performance of the Works;
 - (v) coordinate insurance with the insurance coverage of such Owner Party as it affects the Works;
 - (vi) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Highway 407 East Construction;
 - (vii) provide technical statements and details of the Toll System Field Equipment from time to time to the Owner for purposes of the Owner providing same to prospective Owner Parties in respect of the Highway 407 East Construction; and
 - (viii) cause the applicable Service Provider Party to extend the benefit of Section 2.12(iii) of the CGLA to the Owner Parties in respect of the Highway 407 East Construction provided that the Owner retains the obligations set out therein.
- (d) In connection with the Highway 407 East Construction, Service Provider shall, during the performance of the Works:
- (i) provide for the coordination and scheduling of the Works with the Highway 407 East Construction;

- (ii) participate with Owner and Owner Parties in reviewing their construction schedules when directed to do so by Owner;
 - (iii) where part of the Works or Service Provider Services is affected by or depends upon, for its proper execution, the Highway 407 East Construction, promptly report to Owner in writing and prior to proceeding with that part of the Works or applicable Service Provider Services, any readily apparent deficiencies in the Highway 407 East Construction. Failure by Service Provider to so report shall invalidate any claims against Owner by reason of such readily apparent deficiencies; and
 - (iv) accelerate the Works pursuant to the Works Schedule in order to integrate and coordinate with any acceleration of the Works Schedule of the Owner Parties in respect of the Highway 407 East Construction.
- (e) In the case of Highway 407 East Construction carried out prior to Phase 2b Substantial Completion in respect of the Toll System Field Equipment, if:
- (i) any Owner Parties cause any damage to the Works;
 - (ii) Service Provider incurs any additional costs or there is any delay in the Works Schedule as a result of any Owner Parties which was not caused by the failure of the Service Provider to (i) comply with the coordination, scheduling and safety instructions of the Owner Parties or (ii) comply with its obligations under Sections 8.5(d)(i) or (ii),
- then, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 33, be treated as a Delay Event and, subject to and in accordance with Section 34, be treated as a Compensation Event.
- (f) Claims, disputes, and other matters in question between Service Provider and Owner Parties shall be dealt with in substantially the same manner as contemplated in Schedule 20 – Dispute Resolution Procedure, provided the Owner Parties have reciprocal obligations and Owner has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Owner Parties. Service Provider shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with Owner contains a similar agreement to arbitrate.
- (g) Placing, installing, applying or connecting the Highway 407 East Construction performed by Owner Parties, on and to the Works performed by Service Provider will not relieve Service Provider from its obligations under the Services Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.
- (h) Owner reserves the right to carry out Additional Works. Owner may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and scheduling of the Additional Works and the safety training in respect of the Additional Works to Service Provider.

8.6 Finance Obligations

- (a) Service Provider shall be responsible for obtaining any financing for the performance of its obligations under this Services Agreement. Owner shall have no responsibility to meet debt service or repayment obligations on any financing incurred by Service Provider in connection with the performance by Service Provider of its obligations under this Services Agreement.

9. REPRESENTATIVES

9.1 The Owner Representative

- (a) Subject to the limitations set out in Section 9.1(d), the Owner Representative shall exercise the functions and powers identified in this Services Agreement as functions or powers to be performed by the Owner Representative and such other functions and powers of Owner under this Services Agreement as Owner may, by notice in writing, notify Service Provider from time to time.
- (b) Owner may, from time to time by written notice to Service Provider, change the Owner Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no Owner Representative has been appointed, or when the Owner Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Owner Representative's functions under this Services Agreement, Owner shall perform or may, by written notice to Service Provider, promptly appoint an alternative Owner Representative to perform the functions which would otherwise be performed by the Owner Representative. Upon receipt of such written notice and subject to the limitations set out in Sections 9.1(a) and 9.1(d), Service Provider and the Service Provider Representative shall be entitled to treat any act of such alternative Owner Representative which is permitted by this Services Agreement as being authorized by Owner, and Service Provider and the Service Provider Representative shall not be required to determine whether authority has in fact been given.
- (d) The Owner Representative shall not, except as otherwise provided in this Services Agreement, be entitled to modify or waive any provision of this Services Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 9.1(a) and 9.1(d), unless otherwise notified in writing, Service Provider and the Service Provider Representative shall be entitled to treat any act of the Owner Representative which is authorized by this Services Agreement as being authorized by Owner, and Service Provider and the Service Provider Representative shall not be required to determine whether authority has in fact been given.

9.2 The Service Provider Representative

- (a) Subject to the limitations set out in Section 9.2(d), the Service Provider Representative shall exercise the functions and powers identified in this Services Agreement as functions

or powers to be performed by the Service Provider Representative and such other functions and powers of Service Provider under this Services Agreement as Service Provider may, by notice in writing, notify Owner from time to time.

- (b) Service Provider may change the Service Provider Representative with the prior written consent of Owner.
- (c) During any period when the Service Provider Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Service Provider Representative's functions under this Services Agreement, Service Provider shall perform or may, by written notice to Owner, promptly appoint an alternative Service Provider Representative to perform the functions which would otherwise be performed by the Service Provider Representative, provided that, Service Provider must seek Owner's consent in accordance with Section 9.2(b) if such alternative Service Provider Representative is in place for more than 180 days. Upon receipt of such written notice and subject to the limitations set out in Sections 9.2(a) and 9.2(d), Owner and the Owner Representative shall be entitled to treat any act of such alternative Service Provider Representative which is permitted by this Services Agreement as being authorized by Service Provider, and Owner and the Owner Representative shall not be required to determine whether authority has in fact been given.
- (d) The Service Provider Representative shall not, except as otherwise provided in this Services Agreement, be entitled to modify or waive any provision of this Services Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Section 9.2(d), unless otherwise notified in writing, Owner and the Owner Representative shall be entitled to treat any act of the Service Provider Representative which is authorized by this Services Agreement as being authorized by Service Provider, and Owner and the Owner Representative shall not be required to determine whether authority has in fact been given.

9.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the Owner Representative or the Service Provider Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

9.4 Key Individuals

- (a) Service Provider acknowledges that the individuals possessing the titles identified in Part A of Schedule 7 – Key Individuals are critical to the performance of the Works. Service Provider covenants that the individuals (or their replacements from time to time) possessing the titles identified in Part A of Schedule 7 – Key Individuals (or such new title as has the same or substantially the same responsibilities) will be made available until the Phase 2b Substantial Completion Date and will act as Owner's primary point of contact for the areas that such individual is responsible for in respect of the same services

that such individual provides to Service Provider or a Service Provider Party in respect of 407ETR. Service Provider agrees to cause 407 ETR Limited to appoint the same individuals possessing the titles so identified to the same positions with the same responsibilities within 407 ETR Limited.

- (b) Service Provider acknowledges that the individuals possessing the titles identified in Part B of Schedule 7 – Key Individuals are critical to the performance of the Service Provider Services. Service Provider covenants that the individuals (or their replacements from time to time) possessing the titles identified in Part B of Schedule 7 – Key Individuals (or such new title as has the same of substantially the same responsibilities) will be made available throughout the Project Term and will act as Owner’s primary point of contact for the areas that such individual is responsible for in respect of the same services that such individual provides to Service Provider or a Service Provider Party in respect of 407ETR. Service Provider agrees to cause 407 ETR Limited to appoint the same individuals possessing the titles so identified to the same positions with the same responsibilities within 407 ETR Limited.

10. TOLL SYSTEM MANAGEMENT COMMITTEE

10.1 Establishment

- (a) The Parties shall, within 30 days after the Effective Date, establish a committee (the “**Toll System Management Committee**”) consisting of:
- (i) the Owner Representative;
 - (ii) two representatives of MTO appointed by MTO from time to time; and
 - (iii) three representatives of Service Provider, one of whom shall be the Service Provider Representative and two of whom shall be appointed by Service Provider from time to time.
- (b) The Independent Certifier shall be entitled to, but not be required to, attend meetings as a non-voting member of the Toll System Management Committee. Members of the Toll System Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Toll System Management Committee.
- (c) The Owner Representative shall be the chairperson of the Toll System Management Committee and will have a casting vote.

10.2 Function and Role

- (a) The Toll System Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Toll System Management Committee shall interface with the Owner Party Works Committee as and when required.

- (b) The Toll System Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations, both prior to and during the Operational Term, including:
- (i) any design, construction and commissioning issues (including issues related to the Tolling Infrastructure Specifications);
 - (ii) the Works Schedule;
 - (iii) any issues arising from reports or documents provided by Service Provider or the Independent Certifier;
 - (iv) any quality assurance and safety issues;
 - (v) the Works Reports;
 - (vi) to receive and review any reports of the Independent Certifier respecting Phase 1 Substantial Completion, Phase 2a Substantial Completion, and the Phase 2b Substantial Completion;
 - (vii) monitoring the Final Commissioning Program;
 - (viii) monitoring the installation of all Toll System Field Equipment in a timely and efficient manner and in accordance with the Works Schedule;
 - (ix) any joint review of the Service Provider Services and the Output Specifications;
 - (x) any changes to Service Quality Plans;
 - (xi) any performance issues;
 - (xii) any special matter referred to the Toll System Management Committee by Owner, MTO or Service Provider;
 - (xiii) any changes to the Data Collection and Retention Procedures and Reports;
 - (xiv) any community and media relations issues in accordance with Schedule 12 - Communications Protocol; and
 - (xv) any other issue pertaining to the Project Operations, including any future changes that Service Provider intends to implement and which the Service Provider reasonably believes (A) will materially affect the customer experience of users of Highway 407 East or (B) could affect the amount of Toll Rates and User Fees of the Owner.
- (c) Subject to Section 10.2(d), any unanimous decision of the Toll System Management Committee shall be final and binding on the Parties. If the Toll System Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

Notwithstanding this Section 10.2, the design and maintenance program of the Toll System are the sole responsibility of the Service Provider.

- (d) The Toll System Management Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Services Agreement;
 - (ii) any change to:
 - (A) a major milestone date set out in the Works Schedule,
 - (B) the Scheduled Phase 1 Substantial Completion Date,
 - (C) the Scheduled Phase 2a Substantial Completion Date,
 - (D) the Scheduled Phase 2b Substantial Completion Date,
 - (E) the Scheduled Final Phase 1 Completion Date,
 - (F) the Scheduled Final Phase 2a Completion Date, or
 - (G) the Scheduled Final Phase 2b Completion Date;
 - (iii) any change that may materially adversely affect Service Provider's ability to achieve:
 - (A) Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date or Final Phase 1 Completion by the Scheduled Final Phase 1 Completion Date;
 - (B) Phase 2a Substantial Completion by the Phase 2a Substantial Completion Date or Final Phase 2a Completion by the Final Phase 2a Completion Date; or
 - (C) Phase 2b Substantial Completion by the Scheduled Phase 2b Substantial Completion Date or Final Phase 2b Completion by the Scheduled Final Phase 2b Completion Date;
 - (iv) any Variation;
 - (v) any change that may materially adversely affect Service Provider's ability to perform the Service Provider Services;
 - (vi) any matter with respect to which Owner has a right of consent or in respect of which Owner may have discretion pursuant to this Services Agreement; or
 - (vii) any future changes that Service Provider intends to implement and which the Service Provider reasonably believes (A) will materially affect the customer

experience of users of Highway 407 East or (B) could affect the amount of Toll Rates and User Fees of the Owner.

10.3 Replacement of Committee Members

- (a) Each of Owner, MTO and Service Provider shall be entitled to replace any of its respective representatives on the Toll System Management Committee by written notice to others. Owner will use commercially reasonable efforts to deliver and to cause MTO to deliver prior written notice of any such replacement to Service Provider. Service Provider will use commercially reasonable efforts to deliver prior written notice of any such replacement to Owner and MTO.

10.4 Procedures and Practices

- (a) The members of the Toll System Management Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Toll System Management Committee as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Toll System Management Committee such other Persons as the members of the Toll System Management Committee may agree;
 - (iii) exclude from any meeting of the Toll System Management Committee such Persons (other than members of the Toll System Management Committee) as the members of the Toll System Management Committee may agree; and
 - (iv) receive and review reports from any Person or organization agreed to by the members of the Toll System Management Committee.
- (b) Once established, the Toll System Management Committee shall meet at least once each month, unless otherwise agreed by the members of the Toll System Management Committee or the Parties.
- (c) Any member of the Toll System Management Committee, may convene a special meeting of the Toll System Management Committee at any time. Special meetings of the Toll System Management Committee may be convened on not less than five Business Days notice to all members of the Toll System Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Toll System Management Committee, the Toll System Management Committee shall meet at the offices of the Owner in Toronto. Meetings of the Toll System Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all Persons participating in the meeting to communicate with each other simultaneously and instantaneously. A Person participating in a meeting by such means will be deemed to be present at such meeting.

- (e) For the period from the establishment of the Toll System Management Committee until the Phase 2b Substantial Completion Date, one representative of Owner, one representative of Service Provider and one representative of MTO shall constitute a quorum at any meeting of the Toll System Management Committee. For the period from the day after the Phase 2b Substantial Completion Date until the Termination Date, one representative of MTO and one representative of Service Provider shall constitute a quorum at any meeting of the Toll System Management Committee. A quorum of members may exercise all the powers of the Toll System Management Committee. The members shall not transact business at a meeting of the Toll System Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Toll System Management Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Owner. Owner shall use commercially reasonable efforts to circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Service Provider notifies Owner within five Business Days of receipt of the minutes that Service Provider disagrees with the contents of the minutes, Service Provider, Owner and MTO shall be deemed to have approved such minutes. Owner shall maintain a complete set of all minutes of the meetings of the Toll System Management Committee and shall make such minutes available for inspection by Service Provider during regular business hours. All such minutes shall constitute Confidential Information of both Owner and Service Provider.

11. LICENCE

11.1 Licence to Site

- (a) Effective from the Effective Date until the Termination Date and subject to this Section 11, Owner shall grant or cause to be granted, and shall continuously until the Service Provider ceases providing Service Provider Services under Schedule 22 – Termination/Expiry Services, grant or cause to be granted, to Service Provider and all Service Provider Parties such non-exclusive licence rights of use and access to, on and over the Site as are required by Service Provider and sufficient to allow Service Provider to perform the Project Operations.
- (b) In consideration for the licence granted pursuant to Section 11.1(a), Service Provider shall provide the Project Operations subject to and in accordance with this Services Agreement.
- (c) Without derogating from any of Owner's rights hereunder, in particular, its rights of access to the Site prior to the Phase 2b Substantial Completion Date, Owner acknowledges that, in respect of the Project Operations, Service Provider and the Service Provider Parties require, and Owner shall provide, access to the Site without material interference by Owner, any Owner Party or other Government Entity from the Effective Date until the Termination Date.
- (d) None of the rights granted pursuant to this Section 11.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and

similar interests which benefit the Site, obtained after the Effective Date, to the extent the same are necessary for the Project Operations.

- (e) The licence provided in this Section 11.1 shall automatically terminate as of the Termination Date.

11.2 Non-exclusive Licence/Development of Site

- (a) Service Provider acknowledges and agrees that the rights granted to Service Provider and the Service Provider Parties hereunder shall be non-exclusive and that Owner and any Person authorized by it, including MTO and any Owner Party, may occupy and possess the Site.
- (b) Without limiting Section 11.2(a), Service Provider acknowledges that Owner may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, portions of the Site other than those portions of the Site necessary for the performance of the Project Operations. To the extent that such use or development materially adversely interferes with Service Provider's licence rights hereunder or materially adversely interferes with Service Provider's ability to perform the Project Operations, such use or development shall, subject to and in accordance with Schedule 15 - Variation Procedure, result in a Variation.

11.3 Limited Access Areas

- (a) For purposes related to safety, security and confidentiality, effective upon Phase 2b Substantial Completion of the Toll System Field Equipment, Owner may limit or restrict Service Provider's and each Service Provider Party's access to designated portions of the Site unless a Person seeking access obtains the prior written consent of Owner, which consent may be subject to such conditions as are imposed by Owner, in its Sole Discretion.

11.4 Naming and Signage

- (a) Service Provider acknowledges that Owner reserves and retains (i) all rights to designate the name for Highway 407 East and the Toll System Field Equipment and any part of either; (ii) all rights to signage in relation to Highway 407 East, the Site and the Toll System Field Equipment; and (iii) all rights, Trade-Marks, naming or branding regarding Highway 407 East and the Toll System Field Equipment or any part of either. It is agreed, however, that, with the prior written consent of Owner, which may take into consideration any applicable governmental guidelines, Service Provider and the Service Provider Parties may, for the period prior to Phase 2b Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names). For greater certainty and notwithstanding the foregoing, the naming, branding and all markings on the transponders will be determined by Service Provider in its sole discretion, and Owner will have no right to designate any name for, or include any Trade-Marks or branding regarding, any transponders used in connection with the Toll System Field Equipment.

- (b) Either Service Provider or 407 ETR Limited own all transponders used herein and, to the extent that 407 ETR Limited owns the transponders, Service Provider shall cause 407 ETR Limited to supply Service Provider with such transponders for use as required herein. All transponders will be the exclusive property of 407 ETR Limited or Service Provider, as applicable, and Owner acknowledges and agrees that it has no rights therein.

11.5 No Interest in Land

- (a) Service Provider agrees that it acquires no estate, right, title or ownership interest in the Site or any other interest in land pursuant to this Services Agreement or otherwise. Notwithstanding any provision herein to the contrary, Owner shall at all times retain the fee simple interest in and freehold title to the Site and, once title is transferred to Owner or it is affixed to the Site, the Toll System Field Equipment, unencumbered by any interest of Service Provider.

11.6 Non-Disturbance Agreement

- (a) If Owner mortgages, charges or otherwise encumbers the Site, Owner shall notify Service Provider and, at the request of Service Provider, provide Service Provider with an agreement executed by the mortgagee of the Site permitting Service Provider to access and use the Site under the licence granted pursuant to this Section 11 free from interference from the mortgagee or any Person claiming by or through the mortgagee. This Section 11.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 11.2(b) if neither the licence granted pursuant to this Section 11 nor the Project Operations pertain to such portion of the Site.

12. TITLE ENCUMBRANCES

12.1 Title Encumbrances

- (a) Owner may add Title Encumbrances after the Effective Date.
- (b) Subject to Encumbrances that Service Provider shall remove pursuant to Section 12.2, no act or omission by Service Provider or any Service Provider Party shall give rise to a right for any Person to obtain title to or any interest in the Site or any part of it, except in accordance with the terms of this Services Agreement.
- (c) In the event that any obligations under any Title Encumbrances are added after the Effective Date, to the extent that such new Title Encumbrances materially adversely interfere with Service Provider's ability to perform the Project Operations or materially adversely affect Service Provider's cost of performing the Project Operations, such new obligations shall, subject to and in accordance with Schedule 15 – Variation Procedure, result in a Variation.

12.2 No Site Encumbrances

- (a) Service Provider shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered upon or against the Site or any part thereof or any interest therein due to an act or omission of Service Provider or any Service Provider Party.
- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance which has not been consented to in writing by Owner due to an act or omission of Service Provider or any Service Provider Party, Service Provider shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, Owner will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Service Provider of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.

12.3 Construction Lien Act (Ontario)

- (a) The Parties acknowledge that the foregoing provisions of Section 12.2 shall apply to claims for lien made upon or against the Site pursuant to the CLA and shall also apply to claims made against Owner or for the holdback under the CLA as though such a claim were an Encumbrance made upon or against the Site as referred to therein.
- (b) Service Provider shall withhold from each of its Subcontractors the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA.
- (c) Service Provider shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Service Provider shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.

13. SITE CONDITION

13.1 Contamination

- (a) Owner shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination that is caused by Service Provider or any Service Provider Party, which shall be Service Provider's responsibility.

- (b) Upon the discovery of any Contamination for which Owner is responsible pursuant to Section 13.1(a), Service Provider shall immediately inform the Owner Representative and shall comply with all Applicable Law in respect thereof at Owner's cost pursuant to Section 13.1(d).
- (c) In the event that Owner wishes Service Provider to perform actions which are in addition to any required pursuant to Section 13.1(b), then Owner shall issue an instruction to Service Provider specifying what action Owner requires Service Provider to take and Service Provider shall promptly and diligently comply with all such instructions at Owner's cost pursuant to Section 13.1(d).
- (d) If Sections 13.1(b) and 13.1(c) require Service Provider to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which Owner is responsible pursuant to Section 13.1(a) and which would not otherwise be required under this Services Agreement, then any such alteration, addition, demolition, extension or variation:
 - (i) in the Works shall, subject to and in accordance with Section 34, be treated as a Delay Event and, subject to and in accordance with Section 35, be treated as a Compensation Event; and
 - (ii) in the Service Provider Services shall, subject to and in accordance with Schedule 15 - Variation Procedure, result in a Variation.

13.2 Items of Geological, Historical or Archaeological Interest or Value

- (a) As between the Parties, all fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of Owner.
- (b) Upon the discovery of any item referred to in Section 13.2(a) during the course of the Works, Service Provider shall:
 - (i) immediately inform the Owner Representative of such discovery;
 - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
 - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
 - (iv) comply, and ensure compliance by all Service Provider Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the Heritage Guidelines and Protocols.
- (c) In the event that Owner wishes Service Provider to perform actions which are in addition to any required pursuant to Section 13.2(b), then Owner shall issue an instruction to

Service Provider specifying what action Owner requires Service Provider to take and Service Provider shall promptly and diligently comply with all such instructions.

13.3 Compensation Event

- (a) If Sections 13.2(b) and 13.2(c) require Service Provider to perform any alteration, addition, demolition, extension or variation in the Works or to suspend or delay performance of the Project Operations as a result of such discovery and which would not otherwise be required under this Services Agreement, then any such alteration, addition, demolition, extension or variation in the Works, or suspension or delay in performance of the Project Operations shall, subject to and in accordance with Section 34, be treated as a Delay Event and, subject to and in accordance with Section 35, be treated as a Compensation Event.

14. UTILITIES AND UTILITY COMPANY FEES

14.1 Utilities and Utility Company Fees

- (a) Owner shall pay to any applicable Utility Company, when due, all fees, costs and charges (and applicable Taxes thereon) chargeable by the applicable Utility Company in respect of the Toll System Field Equipment, including:
 - (i) electricity or other utilities required to power the Toll System Field Equipment;
 - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed under any applicable agreement between Owner and any Utility Company;
 - (iii) any security deposits required under any applicable agreement between Owner and any Utility Company; and
 - (iv) any other amounts payable under any applicable agreement between Owner and any Utility Company.
- (b) The Parties agree that any refund, partial rebate or credit granted by any applicable Utility Company relating to the fees, costs and charges referred to in Section 14.1(a) shall be for the benefit of Owner.

15. DESIGN AND CONSTRUCTION OBLIGATIONS

15.1 Overall Responsibility

- (a) Service Provider shall perform and complete the Works:
 - (i) in accordance with the Design Data;
 - (ii) so as to satisfy the Output Specifications;
 - (iii) in accordance with the Works Schedule; and

- (iv) in accordance with the other terms of this Services Agreement.
- (b) Without prejudice to Section 15.1(a), if, at any time during the Project Term, any of the Works carried out by or on behalf of Service Provider do not fully satisfy the Output Specifications and/or any other term or condition of this Services Agreement, Service Provider shall, at its own cost and expense, rectify the Works, the Toll System Field Equipment and any part thereof so that:
 - (i) the Works, the Toll System Field Equipment and all parts thereof together with the Toll System, 407ETR Tolling System and the Tolling Infrastructure Works shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Services Agreement; and
 - (ii) the Works, the Toll System Field Equipment and all parts thereof together with the Toll System, 407ETR Tolling System and the Tolling Infrastructure Works will, at all times, be able to meet the performance standards set out in the Output Specifications.

15.2 Complete and Operational Toll System

- (a) Service Provider shall design, engineer, construct and commission the Toll System Field Equipment so that when used with the 407ETR Tolling System, the Tolling Infrastructure Works and all other relevant components comprises a complete and operational toll system in accordance with and subject to the terms of this Services Agreement, including the Output Specifications and that will allow Service Provider to perform the Service Provider Services.
- (b) Owner acknowledges that Service Provider has provided the Tolling Infrastructure Specifications in respect of the Tolling Infrastructure Works. Service Provider may update the Tolling Infrastructure Specifications with respect to Phase 2a and Phase 2b within 30 days of the Amended and Restated Effective Date.
- (c) In the event that changes to the design of the Tolling Infrastructure Works are made as a result of changes made by Service Provider to the Tolling Infrastructure Specifications submitted by Service Provider after the 30 day period contemplated in Section 15.2(b), Service Provider shall indemnify and save harmless Owner and each Government Entity and each of their respective directors, officers, employees, Board appointees, agents and representatives from and against any and all costs incurred as a result of such changes to the Tolling Infrastructure Works that are implemented by way of a Variation under the Project Agreement.

15.3 Development of Design

- (a) Service Provider shall, at its own cost, develop and complete the design of the Toll System and all Design Data in accordance with the requirements of this Services Agreement.

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- (b) The Parties agree that the Output Specifications provide a list of Design Data and other items, including without limitation the Owner Party Design Data, that will require design review.
 - (c) Service Provider shall submit to the Owner Representative for review, in accordance with Schedule 8 – Review Procedure, all Design Data and other items listed as specified in the Output Specifications; provided, however, Owner acknowledges and agrees that in no event will the review process relating to the Design Data require Service Provider to make any alteration, change, addition, subtraction or modification to the Service Provider Equipment without the Service Provider’s prior written consent.
 - (d) All design review meetings held by Service Provider that Owner wishes to attend shall be held in the City of Toronto unless Owner otherwise agrees in writing.
 - (e) Neither Owner nor any Owner Party nor any other Government Entity will have any liability:
 - (i) if a document submitted by Service Provider and accepted by Owner or the Owner Representative results in non-compliance with this Services Agreement by Service Provider or a breach by Service Provider of Applicable Law; or
 - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Service Provider.
 - (f) Service Provider and Owner will cooperate with each other in the design review process, but, notwithstanding such cooperation and review of the design by Owner, such review shall not constitute acceptance of the Works, and Service Provider shall remain solely responsible for compliance in full with all requirements of this Services Agreement.
 - (g) Service Provider shall allow the Owner Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Owner Representative as soon as practicable following receipt of a written request from the Owner Representative.

15.4 Performance of Design Obligations

- (a) In the design and engineering of the Toll System Field Equipment, Service Provider, its consultants and the Service Provider Parties to the extent applicable shall, at a minimum, exercise the standard of care normally exercised by (i) licensed or registered professional architectural and engineering Personnel and (ii) software design Personnel, in each case having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Service Provider shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and

design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

15.5 General Construction Obligations

- (a) Service Provider is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Toll System Field Equipment, and other performance of the Works.
- (b) Service Provider shall in a timely and professional manner and in accordance with the requirements of this Services Agreement:
 - (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner;
 - (ii) except for works constructed by Owner or any Owner Party, ensure that no works other than the Works under this Services Agreement are constructed on the Site by Service Provider or any Person for whom Service Provider is responsible at law;
 - (iii) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
 - (A) are of a kind that are consistent with the Output Specifications;
 - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Laws and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
 - (C) where they differ from the Output Specifications, have been substituted with Owner's prior written consent in accordance with Section 15.6.

15.6 Substitutions

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Services Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of Owner, in its Sole Discretion, where such substitution materially changes any Owner Deliverable or Owner liability.

15.7 Change in Standards

- (a) Where this Services Agreement requires Service Provider to comply with a technical standard in respect of the design and construction of the Toll System Field Equipment, and

that standard has changed between the Effective Date and the date that such compliance is required, then Service Provider shall give notice to Owner of such change. If, after such notice, Owner requires compliance with the changed standard (rather than the standard applicable as of the Effective Date), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 15 - Variation Procedure, result in a Variation. If Owner does not require compliance with the changed standard, then Service Provider shall continue to comply with the standard applicable as of the Effective Date, without a Variation therefor. This Section 15.7 shall not apply where a change in a technical standard is also a Change in Law.

15.8 Submittals

- (a) Any and all items, documents and anything else required or specified by this Services Agreement
 - (i) in respect of the Works to be submitted to, reviewed or otherwise processed by Owner prior to, as applicable, the Phase 1 Substantial Completion, the Phase 2a Substantial Completion, or the Phase 2b Substantial Completion; or
 - (ii) after the Phase 1 Substantial Completion, the Phase 2a Substantial Completion, the Phase 2b Substantial Completion in respect of the completion of Minor Deficiencies,

including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Owner pursuant to Schedule 8 - Review Procedure.

16. OWNER ACCESS AND MONITORING

16.1 Owner Access During Project Operations

- (a) Subject to Section 16.1(b) but without limiting any of Owner's rights in respect of the Site, Service Provider acknowledges and agrees that Owner and the Owner Parties shall have unrestricted access to the Site, the Toll System Field Equipment and any workshop where materials, plant or equipment in respect of the Toll System Field Equipment are being prepared or stored at all reasonable times during normal business hours.
- (b) In exercising their access rights under Section 16.1(a), Owner and the Owner Parties shall:
 - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for Owner's own use or Owner Parties' own use);
 - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Service Provider Representative from time to time; and

- (iii) if required by Service Provider, be accompanied by a representative of Service Provider or a Service Provider Party.

16.2 Increased Monitoring

- (a) If, at any stage, Owner is of the opinion, acting reasonably, that there are defects in the Works or that Service Provider has failed to comply, in any material respect, with the requirements of this Services Agreement, Owner may, without prejudice to any other right or remedy available to it, by notice to Service Provider, increase the level of monitoring of Service Provider from that set out in this Services Agreement to such level as Owner considers reasonable taking into account the nature of the relevant defect or failure until such time as Service Provider shall have demonstrated, to Owner's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Services Agreement.

16.3 Right to Open Up

- (a) Owner shall have the right, at any time prior to the final completion date in respect of the applicable Phase, to request Service Provider to open up and inspect (or allow Owner to inspect) any part or parts of the Toll System Field Equipment that forms part of such Phase, or to require testing of any part or parts of the Works, where Owner reasonably believes that such part or parts of the Works is or are defective or that Service Provider has failed to comply with the requirements of this Services Agreement relevant to such part or parts of the Works, and Service Provider shall comply with such request. When Owner makes such a request, Owner shall include reasonably detailed reasons with such request.
- (b) If the inspection or testing shows that the relevant part or parts of the Works is or are defective or that Service Provider has failed to comply with the requirements of this Services Agreement relevant to such part or parts of the Works, Service Provider shall rectify all such defects and non-compliance diligently and at no cost to Owner and Service Provider shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection or testing shows that the relevant part or parts of the Works is or are not defective and that Service Provider has complied with the requirements of this Services Agreement relevant to such part or parts of the Works, the exercise by Owner of its rights pursuant to this Section 16.3 shall, subject to and in accordance with Section 34, be treated as a Delay Event and, subject to and in accordance with Section 35, be treated as a Compensation Event.

16.4 No Relief from Obligations

- (a) The Parties acknowledge that the exercise by Owner or the Owner Representative of the rights under this Section 16 shall in no way affect the obligations of Service Provider under this Services Agreement except as set out in this Section 16.

17. WORKS SCHEDULE

17.1 Completion of Works

- (a) Upon receipt of the Notice to Proceed (which shall not be delivered by Owner less than thirty (30) months prior to the Scheduled Phase 1 Substantial Completion Date), Service Provider shall complete the Works in accordance with this Services Agreement and achieve:
 - (i) Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date;
 - (ii) Final Phase 1 Completion by the Scheduled Final Phase 1 Completion Date;
 - (iii) Phase 2a Substantial Completion by the Scheduled Phase 2a Substantial Completion Date;
 - (iv) Final Phase 2a Completion by the Scheduled Final Phase 2a Completion Date;
 - (v) Phase 2b Substantial Completion by the Scheduled Phase 2b Substantial Completion Date; and
 - (vi) Final Phase 2b Completion by the Scheduled Final Phase 2b Completion Date.
- (b) Without limiting the generality of Section 17.1(a), Service Provider shall complete the Works in accordance with Schedule 11 - Works Schedule.

17.2 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Services Agreement but subject to Section 34, if, at any time:
 - (i) the actual progress of the Works has significantly fallen behind the Works Schedule; or
 - (ii) Owner is of the opinion that:
 - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
 - (B) Service Provider will not achieve:
 - (I) Phase 1 Substantial Completion by the Phase 1 Longstop Date,
 - (II) Phase 2a Substantial Completion by the Phase 2a Longstop Date, or
 - (III) Phase 2b Substantial Completion by the Phase 2b Longstop Date;

Service Provider shall be required:

- (iii) within five Business Days of receipt of notice from Owner, to produce and deliver to each of the Owner Representative and the Independent Certifier:
 - (A) a report identifying the reasons for the delay; and
 - (B) a plan showing the steps that are to be taken by Service Provider to eliminate or reduce the delay to, as applicable:
 - (I) achieve Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date; or if Phase 1 Substantial Completion will not be achieved by the Scheduled Phase 1 Substantial Completion Date, achieve Phase 1 Substantial Completion by the Phase 1 Longstop Date;
 - (II) achieve Phase 2a Substantial Completion by the Scheduled Phase 2a Substantial Completion Date; or if Phase 2a Substantial Completion will not be achieved by the Scheduled Phase 2a Substantial Completion Date, achieve Phase 2a Substantial Completion by the Phase 2a Longstop Date; or
 - (III) achieve Phase 2b Substantial Completion by the Scheduled Phase 1 Substantial Completion Date; or if Phase 2b Substantial Completion will not be achieved by the Scheduled Phase 2b Substantial Completion Date, achieve Phase 2b Substantial Completion by the Phase 2b Longstop Date; and
- (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 17.2(a)(iii)(B) and approved by the Owner Representative.
- (b) Service Provider shall notify the Owner Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.

17.3 Notification of Early Substantial Completion

- (a) Unless Service Provider obtains the prior written consent of Owner, in Owner's Sole Discretion, Service Provider shall not be entitled to:
 - (i) the Phase 1 Substantial Completion Certificate prior to, and the Phase 1 Substantial Completion Date and Phase 1 Payment Commencement Date shall not be earlier than, the Scheduled Phase 1 Substantial Completion Date;
 - (ii) the Phase 2a Substantial Completion Certificate prior to, and the Phase 2a Substantial Completion Date and Phase 2a Payment Commencement Date shall not be earlier than, the Phase 2a Substantial Completion Date; and

- (iii) the Phase 2b Substantial Completion Certificate prior to, and the Phase 2b Substantial Completion Date and Phase 2b Payment Commencement Date shall not be earlier than, the Scheduled Phase 2b Substantial Completion Date.
- (b) If Service Provider advises Owner that Service Provider expects to be able to achieve:
- (i) Phase 1 Substantial Completion prior to the Scheduled Phase 1 Substantial Completion Date,
 - (ii) Phase 2a Substantial Completion prior to the Scheduled Phase 2a Substantial Completion Date, or
 - (iii) Phase 2b Substantial Completion prior to the Scheduled Phase 2b Substantial Completion Date,

the Owner Representative shall be entitled to require Service Provider to produce and submit to the Owner Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date(s) for Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, would be so as to enable Owner to consider at its Sole Discretion:

- (iv) whether to agree to, as applicable, an earlier Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial Completion Date, or Scheduled Phase 2b Substantial Completion Date; and
- (v) what modifications, if any, shall be required to this Services Agreement in order to accommodate, as applicable, such earlier Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial Completion Date, or Scheduled Phase 2b Substantial Completion Date.

18. EQUIPMENT

18.1 Service Provider Equipment Responsibilities

- (a) Service Provider will, at no cost to the Owner, obtain the Service Provider Equipment and the Toll System Field Equipment and will coordinate and complete the installation thereof in accordance with this Section 18 and the Output Specifications.
- (b) Owner may, subject to Section 18.1(d), require Service Provider to purchase Additional Equipment and Service Provider will, in accordance with Section 18.2, be responsible for procuring all Additional Equipment and for coordinating and completing the installation thereof in accordance with this Section 18.
- (c) Without prejudice to Section 48.1(a), Owner may, if it so chooses, enter into all purchase orders or contracts with respect to the Additional Equipment that is procured by Service Provider pursuant to Section 18.1(b).

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- (d) Where Owner requires Service Provider to purchase Additional Equipment, Owner shall issue a Variation Enquiry in relation thereto and the relevant provisions of Schedule 15 – Variation Procedure shall apply.
 - (e) Service Provider shall use reasonable commercial efforts to ensure that the benefit of all manufacturers' warranties with respect to all Toll System Field Equipment and all Additional Equipment are freely assignable to Owner on termination of this Services Agreement as contemplated and in accordance with Section 42.4(a)(vii) and Service Provider will not enter into any purchase order or contract with respect to any such Toll System Field Equipment or Additional Equipment where the benefit of such warranties are not so assignable without first notifying Owner and giving to Owner a reasonable opportunity to exercise its rights set out in Section 18.1(c) in relation thereto.

18.2 Service Provider Procurement Responsibilities

- (a) Service Provider will act as purchasing and procurement manager for the Toll System Field Equipment and the Additional Equipment and in so doing will:
 - (i) with respect to the Additional Equipment, establish procurement processes that are fair, open and competitive, all in accordance with any applicable Owner policies and good purchasing and procurement practices;
 - (ii) with respect to the Additional Equipment, comply with such procurement processes;
 - (iii) supervise delivery of all Toll System Field Equipment and all Additional Equipment in accordance with Section 18.7 and provide periodic reports thereon to Owner;
 - (iv) manage the installation of all Toll System Field Equipment and all Additional Equipment in accordance with this Section 18 and provide periodic reports thereon to Owner;
 - (v) with respect to Additional Equipment, act as a single point of contact for all equipment vendors with respect to all such procurement and installation issues as more particularly specified in this Section 18; and
 - (vi) perform such other duties and responsibilities as set out in this Section 18.

18.3 Maintenance of Toll System

- (a) Service Provider shall be responsible for the ongoing maintenance, repair and replacement, as necessary, of the Toll System and the Service Provider Equipment. Such maintenance, repair and replacement shall be undertaken in accordance with the Services Output Specifications.

18.4 Standards for Equipment

- (a) Without limiting the generality of Section 25.1, Service Provider shall cause all Toll System Field Equipment and such Additional Equipment that forms part of the Toll System Field Equipment procured by Service Provider to be:
 - (i) of the type specified in, and required to satisfy, the Output Specifications;
 - (ii) new in respect of the Works, and thereafter new, or if spares, never used, or if used are refurbished;
 - (iii) of good quality, fit for their intended purpose;
 - (iv) maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
 - (v) in compliance with all Applicable Law; and
 - (vi) delivered and installed in accordance with the Works Schedule and the Output Specifications.
- (b) Service Provider shall, as soon as practicable after receiving a request from the Owner Representative, supply to the Owner Representative evidence to demonstrate its compliance with this Section 18.4.

18.5 Decommissioning of Toll System Field Equipment

- (a) Owner may, subject to and in accordance with Schedule 15 - Variation Procedure, require Service Provider to arrange for the safe disposal of any Toll System Field Equipment and any Additional Equipment forming part of the Toll System Field Equipment in accordance with Good Industry Practice, all Applicable Law and the requirements of any Governmental Authority.
- (b) Any and all net proceeds of such disposition shall, at Owner's option, either be credited to Owner or paid to Owner.

18.6 Minimizing Disruptions

- (a) Service Provider shall perform its procurement, delivery, installation, commissioning, maintenance, repair, decommissioning, upgrade and replacement of Toll System Field Equipment and Additional Equipment so as to comply with the requirements of the Output Specifications. Service Provider acknowledges and agrees that such activities may require work outside of normal business hours in order to accommodate the efficient operation of the Toll System.

18.7 Scheduling of Equipment Procurement and Installation

- (a) Service Provider shall, in consultation with Owner, prepare a schedule for the procurement, installation and commissioning of all Toll System Field Equipment and all Additional Equipment forming part of the Toll System Field Equipment, if any, and shall incorporate the timing of procurement, installation and commissioning of all Toll System Field Equipment and all Additional Equipment forming part of the Toll System Field Equipment, if any, into the Works Schedule and the Final Commissioning Program.
- (b) During the Operational Term, Service Provider shall, in consultation with Owner, prepare a schedule for the procurement, installation and commissioning of any Toll System Field Equipment and any Additional Equipment that is required to be procured, installed or commissioned pursuant to this Services Agreement.

19. INDEPENDENT CERTIFIER

19.1 Appointment

- (a) On or prior to the Notice to Proceed, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Services Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement. The Parties shall endeavour to agree upon the Independent Certifier within 90 days following the Effective Date. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 19.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, as amended from time to time, and Service Provider shall ensure that no Service Provider Party enters into any separate agreement with the Independent Certifier in connection with the Project.

19.2 Role of Independent Certifier

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 - Independent Certifier Agreement, as amended from time to time.

19.3 Changes to Terms of Appointment

- (a) Neither Owner nor Service Provider shall without the other's prior written approval (not to be unreasonably withheld or delayed):
 - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or

- (ii) vary the terms of the Independent Certifier Agreement or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

19.4 Right to Change Appointment

- (a) The Parties acknowledge that the Independent Certifier shall provide certain services and reports to Service Provider, the Service Provider Parties and the Owner in addition to performing the functions of the Independent Certifier under this Services Agreement. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days notice to the Independent Certifier. If such notice is given, then, pursuant to Section 19.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

19.5 Cooperation

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement, as amended from time to time. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

19.6 Payment of Independent Certifier

- (a) Service Provider and Owner shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

19.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement, as amended from time to time.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within five Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
 - (i) each Party shall, within five Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;

- (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

20. COMMISSIONING AND COMPLETION

20.1 Commissioning Activities

- (a) Service Provider shall perform all Service Provider Commissioning pursuant to the Final Commissioning Program.
- (b) Service Provider shall:
 - (i) prepare and submit to Owner a draft Final Commissioning Program, which draft Final Commissioning Program shall reflect the stage of design development of what is to be commissioned;
 - (ii) prepare and submit to Owner a final draft of the Final Commissioning Program, which final draft of the Final Commissioning Program shall reflect the subsequent stage of design development; and
 - (iii) promptly following each delivery to Owner pursuant to Section 20.1(b)(i) and (ii), provide a copy of each draft Final Commissioning Program to the Independent Certifier.
- (c) Each draft of the Final Commissioning Program submitted to Owner by Service Provider shall:
 - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Service Provider Commissioning shall be completed to achieve:
 - (A) Phase 1 Substantial Completion on or before the Scheduled Phase 1 Substantial Completion Date; and
 - (B) Final Phase 1 Completion on or before the Scheduled Final Phase 1 Completion Date;
 - (C) Phase 2a Substantial Completion on or before the Scheduled Phase 2a Substantial Completion Date;

- (D) Final Phase 2a Completion on or before the Scheduled Final Phase 2a Completion;
 - (E) Phase 2b Substantial Completion on or before the Scheduled Phase 2b Substantial Completion Date; and
 - (F) Final Phase 2b Completion on or before the Scheduled Final Phase 2b Completion Date;
- (ii) follow the structure of the Outline Commissioning Program and shall at a minimum detail, to the satisfaction of Owner, acting reasonably, address all matters contemplated by the Outline Commissioning Program; provided, however, that each draft of the Final Commissioning Program may include additional details developed in accordance with this Section 20.1;
 - (iii) impose no greater, additional, or more onerous, obligations on Owner than those set out in the Outline Commissioning Program, unless otherwise agreed to by Owner;
 - (iv) include the names of the individuals or companies proposed to perform all Service Provider Commissioning;
 - (v) include a schedule of each of the Service Provider Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates; and
 - (vi) list the approvals required from any Governmental Authority, manufacturer or other Person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (d) Each draft of the Final Commissioning Program shall be subject to review in accordance with Schedule 8 - Review Procedure.
 - (e) Once the Owner Representative has assigned the comment “REVIEWED” to the final draft of the Final Commissioning Program in accordance with Schedule 8 – Review Procedure, or if required, upon determination pursuant to Section 6 of Schedule 8 – Review Procedure, the final draft of the Final Commissioning Program shall replace the Outline Commissioning Program attached as Schedule 9 hereto.

20.2 Commencement of Service Provider Commissioning

- (a) Service Provider shall give 14 days written notice to the Independent Certifier and the Owner Representative of the proposed commencement of the applicable portion of the Service Provider Commissioning.
- (b) Service Provider shall give at least five Business Days’ notice to, and shall invite, the Independent Certifier and the Owner Representative to witness, and to comment on, each aspect of the Service Provider Commissioning. Service Provider shall, together with such notice, provide all information that the Independent Certifier and the Owner Representative may reasonably require in relation thereto, including:

- (i) tests proposed;
- (ii) test methodology; and
- (iii) expected test results.

20.3 Substantial Completion Certificates

- (a) Service Provider shall give the Independent Certifier and the Owner Representative at least 10 Business Days' notice prior to the date upon which Service Provider anticipates all requirements for Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, shall be satisfied.
- (b) Service Provider shall give the Independent Certifier and the Owner Representative notice (as applicable, the "**Phase 1 Substantial Completion Notice**", the "**Phase 2a Substantial Completion Notice**", or "**Phase 2b Substantial Completion Notice**") upon the satisfaction of all requirements for Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, which Phase 1 Substantial Completion Notice, Phase 2a Substantial Completion Notice, or Phase 2b Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Phase 1 Substantial Completion, Phase 2a Substantial Completion Notice, or Phase 2b Substantial Completion, as applicable, together with Service Provider's opinion as to whether the conditions for issuance of the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, have been satisfied.
- (c) Owner shall, within five Business Days after receipt of the Phase 1 Substantial Completion Notice, the Phase 2a Substantial Completion Notice, or the Phase 2b Substantial Completion Notice, as applicable, provide the Independent Certifier and Service Provider with Owner's opinion as to whether the conditions for issuance of the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, have been satisfied and, if applicable, any reasons as to why it considers that the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, should not be issued.
- (d) Within five Business Days after Service Provider's receipt of Owner's opinion pursuant to Section 20.3(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Phase 1 Substantial Completion Certificate, Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, have been satisfied, having regard for the opinions of both Service Provider and Owner, and to issue to Owner and to Service Provider either:
 - (i) the Phase 1 Substantial Completion Certificate, setting out in such certificate the Phase 1 Substantial Completion Date, the Phase 2a Substantial Completion Certificate, setting out in such certificate the Phase 2a Substantial Completion Date, or the Phase 2b Substantial Completion Certificate, setting out in such certificate the Phase 2b Substantial Completion Date; or

- (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Service Provider to satisfy the conditions for issuance of the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable.
- (e) Where the Independent Certifier has issued a report in accordance with Section 20.3(d)(ii) and Service Provider has not referred a Dispute in relation thereto for resolution in accordance with Schedule 20 - Dispute Resolution Procedure, Service Provider shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Owner Representative with:
 - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Service Provider Commissioning that needs to be undertaken as a result of the rectification actions,

and Service Provider shall perform all such additional rectification actions and Service Provider Commissioning in a timely manner. Upon completion thereof, Service Provider may give a further Phase 1 Substantial Completion Notice, Phase 2a Substantial Completion Notice, or Phase 2b Substantial Completion Notice, as applicable, and Sections 20.3(c) to (e), inclusive, shall be repeated until the Phase 1 Substantial Completion Certificate, Phase 2a Substantial Completion Certificate or the Phase 2b Substantial Completion Certificate, as applicable, has been issued.

- (f) The Independent Certifier's decision to issue or not to issue the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, shall be final and binding on the Parties solely in respect of determining the Phase 1 Payment Commencement Date, Phase 2a Payment Commencement Date or the Phase 2b Payment Commencement Date, as applicable, and a Dispute in relation to the Phase 1 Payment Commencement Date, Phase 2a Payment Commencement Date or the Phase 2b Payment Commencement Date shall not be subject to resolution in accordance with Schedule 20 - Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Phase 1 Substantial Completion Certificate, an Phase 2a Substantial Completion Certificate, or Phase 2b Substantial Completion Certificate, as applicable, may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

20.4 Operation and Maintenance Manuals

- (a) Subject to third party **[Redacted]** intellectual property rights and confidentiality obligations to the third parties, Service Provider shall prepare and deliver to Owner all necessary operation and maintenance manuals for all Toll System Field Equipment, both hard and soft copies, 90 days prior to the Phase 1 Substantial Completion Date, the Phase 2a Substantial Completion Date, or the Phase 2b Substantial Completion Date, as

applicable. From and after such date and throughout the remainder of the Project Term, Service Provider shall prepare and keep current, and at all reasonable times make available to Owner, such operation and maintenance manuals prepared from time to time for all Toll System Field Equipment.

20.5 Minor Deficiencies

- (a) In the event that Minor Deficiencies exist when Service Provider applies for the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, the Independent Certifier, in consultation with Service Provider and Owner, shall, within 15 Business Days of Service Provider's application, prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Service Provider shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of Owner's use and enjoyment of the Toll System Field Equipment or disruption of the Project Operations.
- (c) The Independent Certifier must prepare the Minor Deficiencies List before the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, as applicable, is issued, but shall not withhold the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) Owner may, in its Sole Discretion, waive any requirement for Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, including with respect to Toll System Field Equipment, and the failure to meet any such requirement shall constitute a Minor Deficiency.

20.6 Rectification of Minor Deficiencies

- (a) Service Provider shall, in consultation with the Owner Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations, complete and rectify all Minor Deficiencies within 45 days of the issuance of the Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Service Provider acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal business hours in order to accommodate the efficient operation of the Toll System.

20.7 Failure to Rectify Minor Deficiencies

- (a) If, within 30 days after the time specified in the Minor Deficiencies List, Service Provider has failed to complete and rectify the Minor Deficiencies specified in the Minor Deficiencies List:
 - (i) Owner may withhold from the next payment or payments otherwise due to Service Provider a holdback amount that is **[Redacted]**% of the amount estimated by the Independent Certifier for Owner to complete and rectify the Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account.
- (b) Upon completion and rectification of each Minor Deficiency, Owner shall release to Service Provider the amount of the holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, Owner shall release to Service Provider the then remaining amount of the holdback, together with all interest accrued thereon. If the cost of such completion and rectification exceeds the amount of such holdback and interest, then Service Provider shall reimburse Owner for all such excess cost.

20.8 Final Completion Certificates

- (a) Service Provider shall give the Independent Certifier and the Owner Representative at least 10 Business Days' notice prior to the date upon which Service Provider anticipates all requirements for Final Phase 1 Completion, Final Phase 2a Completion, or Final Phase 2b Completion, as applicable, shall be satisfied.
- (b) Service Provider shall give the Independent Certifier and the Owner Representative notice (as applicable, the "**Final Phase 1 Completion Notice**", "**Final Phase 2a Completion Notice**" or "**Final Phase 2b Completion Notice**") upon the satisfaction of all requirements for Final Phase 1 Completion, Final Phase 2a Completion, or Final Phase 2b Completion, as applicable, which notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Phase 1 Completion, the Final Phase 2a Completion, or Final Phase 2b Completion, as applicable, including the completion and rectification of all Minor Deficiencies, together with Service Provider's opinion as to whether the conditions for issuance of the Final Phase 1 Completion Certificate, the Final Phase 2a Completion Certificate, or Final Phase 2b Completion Certificate, as applicable, have been satisfied.
- (c) Owner shall, within five Business Days after receipt of the Final Phase 1 Completion Notice, the Final Phase 2a Completion Notice, or the Final Phase 2b Completion Notice, as applicable, provide the Independent Certifier and Service Provider with Owner's opinion as to whether the conditions for issuance of the Final Phase 1 Completion Certificate, the Final Phase 2a Completion Certificate, or Final Phase 2b Completion Certificate, as applicable, have been satisfied and, if applicable, any reasons as to why it considers that the Final Phase 1 Completion Certificate, the Final Phase 2a Completion Certificate, or Final Phase 2b Completion Certificate, as applicable, should not be issued.

- (d) Within five Business Days after Service Provider's receipt of Owner's opinion pursuant to Section 20.8(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Phase 1 Completion Certificate, the Final Phase 2a Completion Certificate, or Final Phase 2b Completion Certificate, as applicable, have been satisfied, having regard for the opinions of both Service Provider and Owner, and to issue to Owner and to Service Provider either:
- (i) as applicable, the Final Phase 1 Completion Certificate, setting out in such certificate the Final Phase 1 Completion Date, the Final Phase 2a Completion Certificate, setting out in such certificate the Final Phase 2a Completion Date, or the Final Phase 2b Completion Certificate, setting out in such certificate the Final Phase 2b Completion Date; or
 - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Service Provider to satisfy the conditions for issuance of the Final Phase 1 Completion Certificate, the Final Phase 2a Completion Certificate, or the Final Phase 2b Completion Certificate, as applicable.
- (e) Where the Independent Certifier has issued a report in accordance with Section 20.8(d)(ii) and Service Provider has not referred a Dispute in relation thereto for resolution in accordance with Schedule 20 - Dispute Resolution Procedure, Service Provider shall, within five Business Days after receipt of such report, provide the Independent Certifier and the Owner Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
 - (ii) the schedule for completion of all such rectification actions; and
 - (iii) any additional Service Provider Commissioning that needs to be undertaken as a result of the rectification actions,
- and Service Provider shall perform all such additional rectification actions and Service Provider Commissioning in a timely manner. Upon completion thereof, Service Provider may give a further Final Phase 1 Completion Notice, Final Phase 2a Completion Notice, or Final Phase 2b Completion Notice, as applicable, and Sections 20.8(c) to (e), inclusive, shall be repeated until the Final Phase 1 Completion Certificate, Final Phase 2a Completion Certificate, or the Final Phase 2b Completion Certificate, as applicable, has been issued.
- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Phase 1 Completion Certificate, Final Phase 2a Completion Certificate, or the Final Phase 2b Completion Certificate, as applicable, may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

20.9 Effect of Certificates/Use

- (a) The issue of the Phase 1 Substantial Completion Certificate, the Phase 2b Substantial Completion Certificate, the Final Phase 1 Completion Certificate and the Final Phase 2b Completion Certificate and any use by Owner of any part of the Toll System Field Equipment or receipt by the Owner of Service Provider Services under the terms of this Services Agreement shall, in no way:
 - (i) limit the obligations of Service Provider under this Services Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or
 - (ii) be construed as an approval by Owner or any other Government Entity of the Works or the way in which they have been carried out.

21. TOLL RATES AND USER FEES

21.1 Toll Rates

- (a) Owner shall have the sole and exclusive right to set the Toll Rates for users of Highway 407 East.
- (b) Owner shall specify to Service Provider the Toll Rates and interest thereon to be charged to users of Highway 407 East and Service Provider shall implement same according to the Services Output Specifications and the procedures set out therein.
- (c) For the avoidance of doubt, to the extent that changes to the Toll Rates and/or interest thereon would result in modifications to the tolling structure not contemplated by Schedule 28 - Output Specifications, such changes shall be subject to Schedule 15 – Variation Procedure, and will result in a Variation.

21.2 Ownership of Toll Revenues

- (a) All Toll Revenues and interest thereon shall be the sole and exclusive property of Owner and Service Provider shall have no right, title, entitlement or interest therein.

21.3 User Fees

- (a) The Owner shall have the right to introduce, set, control, change, manage and revoke the User Fees (Highway 407 East) as specified in Schedule 26 – User Fee Protocol.
- (b) Owner shall specify to Service Provider the User Fees (Highway 407 East) and interest thereon to be charged to users of Highway 407 East and Service Provider shall implement same according to the Services Output Specifications and the procedures set out therein.

- (c) Prior to the Service Provider or a Service Provider Party introducing, setting, controlling, changing, managing or revoking any User Fees (407ETR) that are to apply to users of Highway 407 East, Service Provider shall comply, or cause such Service Provider Party to comply, with the User Fee Protocol set out in Schedule 26 – User Fee Protocol.
- (d) For the avoidance of doubt, to the extent that changes to the User Fees (Highway 407 East) would result in modifications to the tolling structure not contemplated by Schedule 28 - Output Specifications, such changes shall be subject to Schedule 15 – Variation Procedure, and will necessitate a Variation.

21.4 Ownership of User Fee Revenues

- (a) Except as set out in Schedule 26 - User Fee Protocol, the User Fee Revenues (Highway 407 East) and interest thereon shall be the sole and exclusive property of Owner and Service Provider shall have no right, title, entitlement or interest therein.
- (b) The User Fee Revenues (407ETR) and interest thereon shall be the sole and exclusive property of Service Provider or a Service Provider Party, as applicable, and Owner shall have no right, title, entitlement or interest therein.

21.5 Collection of Toll Revenues and User Fee Revenues

- (a) Service Provider shall collect the Toll Revenues, the User Fee Revenues (Highway 407 East) and interest thereon, in trust on behalf of Owner, and shall remit all such amounts to Owner’s bank on each Business Day as provided for in the Services Output Specifications and the procedures set out therein. The Parties acknowledge that the Toll Revenues, User Fee Revenues (Highway 407 East) and interest thereon are “public money” for purposes of the *Financial Administration Act* (Ontario).

21.6 Partial and Settlement Payments

- (a) Where Service Provider collects an amount from the user of both 407ETR and Highway 407 East in respect of a single trip or multiple trips and such amount is insufficient to fully satisfy both the 407ETR toll rates and User Fees (407ETR) and the Highway 407 East Toll Rates and User Fees (Highway 407 East) applicable to such user, Service Provider shall apportion such aggregate amount collected between the Parties on the basis set out in Part A or Part B of Schedule 23 – Partial and Settlement Payments.

21.7 Owner to Share in Net Incremental Leasing Fees

- (a) Service Provider shall pay Owner an amount equal to **[Redacted]**% of the Net Incremental Leasing Fees (as defined in this Section) at the end of each of the first two twelve month periods, commencing on the day prior to the start of the Operational Term.
- (b) For the purposes of this Section 21.7, the “**Net Incremental Leasing Fees**” shall be equal to:

- (i) the total leasing fees collected by Service Provider in respect of the Incremental Transponders (as defined in this Section) in the applicable twelve month period of the Operational Term; less
 - (ii) **[Redacted]** of the total purchase cost for the Incremental Transponders; less
 - (iii) reasonable maintenance and handling costs in respect of the Incremental Transponders.
- (c) For the purposes of this Section 21.7, the **“Incremental Transponders”** for the first year of the Operational Term shall be equal to:
- (i) the total actual number of transponders leased by the Service Provider in respect of 407ETR and Highway 407 East as of the day twelve months following the start of the Operational Term; less
 - (ii) the Number of Transponders at Year 1 (defined in this Section), multiplied by 1 plus the Incremental Rate (as defined in this Section)
- (d) For the purposes of this Section 21.7, the Incremental Transponders for the second year of the Operational Term shall be equal to:
- (i) the total actual number of transponders leased by the Service Provider in respect of 407ETR and Highway 407 East as of the day twenty-four months following the start of the Operational Term; less:
 - (ii) the Number of Transponders at Year 1 multiplied by (1 plus the Incremental Rate) to the power of two.
- (e) For the purposes of this Section 21.7, the **“Incremental Rate”** shall be equal to the average annual compound rate of increase in the number of transponders leased in respect of 407ETR over the five-year period ending on the day prior to the start of the Operational Term, calculated as follows:

Incremental Rate = (Number of Transponders Year 5 / Number of Transponders at Year 1) to the power of $(1/5) - 1$, where,

Number of Transponders at Year 1 = the actual total number of transponders leased by Service Provider in respect of 407ETR as of the date five (5) years prior to the start of the Operational Term

Number of Transponders at Year 5 = the actual total number of transponders leased by Service Provider in respect of 407ETR as of the day immediately prior to the start of the Operational Term.

21.8 Rewards Programs for Highway 407 East

- (a) Owner and Service Provider agree to act collaboratively and in good faith in respect of any customer rewards programs that may be offered by Owner to the users of Highway 407 East. Such collaboration shall be in a manner consistent with the existing rewards programs for 407ETR such as [Redacted] and the [Redacted].
- (b) Owner shall have the right in its Sole Discretion to develop additional rewards programs that apply to users of Highway 407 East. Service Provider agrees to provide those support services as are required to assist in the implementation and administration of such Highway 407 East rewards programs. The costs of all rewards offered through rewards programs offered by Owner shall be the sole responsibility of Owner.
- (c) In the event that the new rewards programs under this Section 21.8 are materially different in scope and services from the existing 407ETR programs, Service Provider shall be entitled to a fee in exchange for its support and administrative services in respect of such rewards programs. Owner and Service Provider shall in good faith, acting reasonably, negotiate the applicable fee. In the event that Owner and Service Provider fail to agree on the fee payable under this Section 21.8(c), Service Provider shall have no obligations to Owner in respect of the proposed new rewards programs.

21.9 Access to Highway 407 East User Information

- (a) Owner shall cause MTO to grant Service Provider access to information in MTO's databases with respect to users of Highway 407 East and limited to the requirements of the Service Provider Services using the same means as those through which the Service Provider or 407 ETR Limited obtains such information from MTO currently and upon such terms and conditions as may be imposed upon such access by MTO from time to time, provided that such access shall be at no further cost to Service Provider or 407 ETR Limited, from the Phase 1 Substantial Completion Date until the later of (i) the Termination Date and (ii) the date upon which Service Provider ceases to provide termination assistance pursuant to Schedule 22 - Termination/Expiry Services, and Service Provider shall use such information only for the purposes set out herein and for no other purposes whatsoever.
- (b) The Parties agree that such agreement will contain provisions that any such information with respect to users of Highway 407 East that later become users of 407ETR will also be deemed to have been provided under the 1999 Authorized Requester Agreement.

21.10 Enforcement

- (a) Owner shall, at Owner's cost, carry out on-road enforcement pertaining to transponder usage on Highway 407 East; provided, however, that Owner shall be under no obligation to provide, and Service Provider shall not request or access, such enforcement in respect of users of 407ETR.

- (b) In respect of the Toll Revenues, the User Fee Revenues (Highway 407 East) and interest thereon, Owner shall provide Service Provider with the payment collection procedures set out in Schedule 24 – Miscellaneous Collection Procedures.

22. SERVICE PROVIDER SERVICE OBLIGATIONS

22.1 Overall Responsibility

- (a) Service Provider shall following the Phase 1 Substantial Completion Date, Phase 2a Substantial Completion Date, and Phase 2b Substantial Completion Date, as applicable, perform the Service Provider Services:
 - (i) so as to satisfy the Services Output Specifications; and
 - (ii) in accordance with the other terms of this Services Agreement.

22.2 Commencement of Services

- (a) Service Provider shall commence the Service Provider Services identified on Service Output Specifications as services that need to be provided during Phase 1 on the day immediately after the Phase 1 Substantial Completion Date and thereafter shall provide the Service Provider Services until the end of the Operational Term.
- (b) Service Provider shall commence the Service Provider Services identified on Service Output Specifications as services that need to be provided during Phase 2a on the day immediately after the Phase 2a Substantial Completion Date and thereafter shall provide the Service Provider Services until the end of the Operational Term.
- (c) Service Provider shall commence the Service Provider Services identified on Service Output Specifications as services that need to be provided during Phase 2b on the day immediately after the Phase 2b Substantial Completion Date and thereafter shall provide the Service Provider Services until the end of the Operational Term.

22.3 Coordination and No Disruption

- (a) Service Provider shall perform the Service Provider Services so as to coordinate with the operations of Owner on the Site and shall not adversely interfere with the operations of Owner or any Government Entity.

22.4 No Closure of Toll System Field Equipment

- (a) During the Project Term, and notwithstanding any Relief Event or event of Force Majeure, other than as contemplated in Schedule 28 - Output Specifications, Service Provider shall not close any portion of the Toll System Field Equipment not so affected by such Relief Event or event of Force Majeure in any circumstances, other than as directed or approved by Owner in writing, acting reasonably.

22.5 Equipment for Service Provider Services

- (a) Service Provider will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any Service Provider Equipment and the Toll System Field Equipment required by Service Provider to provide the Service Provider Services.

23. MAINTENANCE

23.1 Maintenance Plans

- (a) No later than 180 days prior to the Phase 1 Substantial Completion Date, Service Provider shall submit to the Owner Representative for review pursuant to Schedule 8 - Review Procedure, the Preventive Maintenance Plan for the Toll System Field Equipment for the first Contract Year. Service Provider shall submit all other plans, reports or assessments required by the Output Specifications within the relevant timeframes set out in the Output Specifications. Service Provider shall, where applicable, update all such plans, reports and assessments as provided for in the Output Specifications thereafter and shall submit updates to the Owner Representative for review pursuant to Schedule 8 – Review Procedure.
- (b) Service Provider shall perform the Maintenance Work as identified in the Preventive Maintenance Plan, and, without limiting Service Provider’s other obligations in respect of the performance of the Project Operations, shall undertake all Maintenance Work:
 - (i) in accordance with the Output Specifications;
 - (ii) at the times scheduled for such Maintenance Work;
 - (iii) in coordination and cooperation with any Owner Party;
 - (iv) in accordance with Good Industry Practice;
 - (v) in a manner that allows the Toll System to remain operational at all times; and
 - (vi) otherwise in accordance with the Preventive Maintenance Plan.

23.2 Revisions to Maintenance Plans

- (a) Service Provider shall make all revisions to the Preventive Maintenance Plan in accordance with the Output Specifications.

23.3 Change in Timing

- (a) Notwithstanding the establishment of or entitlement to proceed with any Preventive Maintenance Plan, the Owner Representative may, at any time and from time to time, require Service Provider to accelerate or defer any Preventive Maintenance, by giving written notice to Service Provider not less than 15 Business Days prior to the scheduled

date for performing such Preventive Maintenance, which notice shall set out the time and periods at or during which Owner requires the Preventive Maintenance to be performed.

- (b) Within five Business Days after receipt by Service Provider of a notice referred to in Section 23.3(a), Service Provider shall notify Owner of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferral (the “**Estimated Increased Maintenance Costs**”). Owner shall, within five Business Days after receipt by Owner of notification of the amount of the Estimated Increased Maintenance Costs, at its option, either confirm or withdraw its request to accelerate or defer the Preventive Maintenance, as applicable. If Owner does not respond within five Business Days, the request shall be deemed to have been withdrawn. In the event that the request is not withdrawn or deemed to have been withdrawn, Owner shall reimburse Service Provider for any reasonable costs actually incurred by Service Provider as a consequence of such acceleration or deferral up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

23.4 Corrective Maintenance

- (a) If, in circumstances other than an Emergency, the need arises for Corrective Maintenance in respect of the Toll System Field Equipment (excluding any work of a de minimis nature in respect of which this Section 23.4 does not apply) that is not scheduled to be carried out as part of the Preventive Maintenance, Service Provider shall promptly notify the Owner Representative of the proposed commencement date, the proposed hours of work and estimated duration of the Corrective Maintenance.
- (b) Service Provider shall be entitled to perform the Corrective Maintenance in respect of the Toll System Field Equipment at the time set out in its notice unless Owner, acting reasonably, requires Service Provider to defer or accelerate such Corrective Maintenance. For greater certainty, Service Provider shall not be entitled to recover from any Government Entity any costs or losses incurred by Service Provider as a consequence of any deferral or acceleration of Corrective Maintenance.
- (c) If pursuant to Section 23.4(b) Owner requires Service Provider to defer Corrective Maintenance in respect of the Toll System Field Equipment, then Service Provider will not be responsible during the deferral period for the failure to meet any service level that would have been achieved had the Corrective Maintenance been performed on the date originally proposed by the Service Provider.

23.5 Emergency Maintenance Work

- (a) If, as a result of an Emergency, the need arises for Corrective Maintenance, Service Provider may perform such Corrective Maintenance, provided that Service Provider shall notify the Owner Representative as soon as possible (and in any event within four hours of the occurrence of the Emergency) of the reasons for and extent of the Corrective Maintenance.
- (b) Service Provider shall use commercially reasonable efforts to minimize the duration of such Corrective Maintenance and its impact upon the performance of the Toll System.

Service Provider acknowledges and agrees that Corrective Maintenance may require work outside of normal business hours in order to accommodate the efficient operation of the Toll System.

23.6 Other Maintenance Work

- (a) The Maintenance Work specified in the Preventive Maintenance Plan shall not limit Service Provider's obligations to perform Maintenance Work.

23.7 Performance Audits

- (a) If Owner reasonably believes that Service Provider is in breach of its obligations with respect to Maintenance Work, including:
 - (i) under this Section 23;
 - (ii) under the Output Specifications; or
 - (iii) in respect of any defects, deficiencies or items of outstanding work required to be completed as part of the Works,

then, not more frequently than one each calendar year during the Operational Term (provided that in respect of any matter the performance audit shows Service Provider has not performed or is not performing its obligations in any material respect, such matter may be subject to more frequent performance audit until such matter is either rectified or disposed of hereunder), Owner may cause to be performed, by an arm's length consultant retained by Owner who is not an owner or operator of an all-electronic toll highway system in North America, a performance audit, inspection and survey of the Toll System Field Equipment to assess whether the Toll System Field Equipment has been and is being maintained by Service Provider in accordance with Service Provider's obligations (the "**Performance Audit**").

- (b) Owner shall notify Service Provider in writing at least one (1) Business Day prior to the date that Owner wishes to cause a Performance Audit to be undertaken. Owner shall, acting in good faith, consider any reasonable request by Service Provider for the Performance Audit to be performed on an alternative date if such request is made by Service Provider in writing on the basis that performing the Performance Audit on the date originally requested by Owner would materially prejudice Service Provider's ability to provide the Service Provider Services.
- (c) When causing any Performance Audit to be undertaken, Owner shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Service Provider Services. The cost of a Performance Audit, except where Section 23.7(d) applies, shall be borne by Owner. Service Provider shall provide Owner, at no additional cost or charge, with any reasonable assistance required by Owner from time to time during the Performance Audit.

- (d) If a Performance Audit shows that Service Provider has not performed or is not performing its obligations in any material respect, Owner shall without liability:
 - (i) provide Service Provider with a written notice of non-compliance;
 - (ii) provide Service Provider with information regarding rectification or Maintenance Work required to be performed by Service Provider in order for Service Provider to perform its obligations;
 - (iii) specify a reasonable period of time within which Service Provider must perform such rectification or Maintenance Work;
 - (iv) be entitled, pursuant to Section 23.7(e), to be paid or reimbursed by Service Provider for the costs of the Performance Audit; and
 - (v) be entitled to exercise all rights pursuant to Section 27.
- (e) If a Performance Audit shows that Service Provider has not performed or is not performing its obligations in any material respect, Service Provider shall:
 - (i) perform any rectification or Maintenance Work necessary in order to cause the Service Provider to not be in breach of its obligations in any material respect within a reasonable period of time specified by Owner, and be responsible for any costs incurred in performing such rectification or Maintenance Work; and
 - (ii) pay or reimburse Owner for the costs of the Performance Audit and any administrative costs incurred by Owner in relation to the Performance Audit.
- (f) Nothing in this Section 23.7 shall limit or restrict Owner's rights hereunder to perform any other performance audits, inspections and surveys otherwise contemplated by this Services Agreement at its own cost and expense.

24. HUMAN RESOURCES

24.1 Admittance of Personnel

- (a) Owner shall have the right to refuse admittance to, or order the removal from the Site of any Person employed by (or acting on behalf of) Service Provider, or any Service Provider Party, whose presence, in the opinion of Owner, acting reasonably, is likely to have an adverse effect on the performance of the Toll System Field Equipment or who, in the opinion of Owner, acting reasonably, is not a fit and proper Person to be at the Site for any reason. Any decision of Owner made pursuant to this Section 24.1 shall be final and conclusive.

24.2 Confirmation of Action

- (a) Any action taken under Section 24.1 shall promptly be confirmed by Owner to Service Provider and, for greater certainty, shall not relieve Service Provider of any of its obligations under this Services Agreement.

24.3 Notification of Personnel

- (a) If and when so requested by Owner, Service Provider shall, within three Business Days of such request, provide a list of the names of all Persons it expects may require admission, in connection with this Services Agreement, to any premises occupied by Owner, specifying the capacities in which those Persons are concerned with this Services Agreement and, subject to Applicable Law, giving such other particulars as Owner may reasonably require.

24.4 Staff Competency

- (a) Service Provider shall ensure that:
 - (i) there shall at all times be a sufficient number of Persons (including all relevant grades of supervisory staff) engaged in the provision of the Service Provider Services with the requisite level of skill and experience to perform the Service Provider Services in accordance with this Services Agreement. For greater certainty, this obligation shall include ensuring that there are sufficient employees to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Service Provider Services;
 - (ii) all employees receive such training and supervision as is necessary to ensure the proper performance of this Services Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements; and
 - (iii) it creates and maintains a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of employees and Service Provider Parties to ensure the proper performance of this Services Agreement.

24.5 Disciplinary Action

- (a) Owner, acting reasonably, may notify Service Provider of any Service Provider or Service Provider Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Site is otherwise considered by Owner to be undesirable or to constitute a threat to the health and/or safety of any of the users of the Site and/or the Toll System Field Equipment. Upon investigation, Service Provider may institute, or may cause the relevant Service Provider Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall advise Owner in writing of the outcome of any disciplinary action taken in respect of such Person.

24.6 Human Resources Policies

- (a) Service Provider shall ensure that there are set up and maintained by it and by all Service Provider Parties, human resources policies and procedures covering all relevant matters relating to the Project Operations (including, for example, health and safety). Service Provider shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are forthwith issued to all Service Provider Parties, and, upon written request, to Owner.
- (b) If Owner provides any comments on, or requests any amendments, modifications or changes to, the policies or procedures maintained pursuant to Section 24.6(a) in respect of access to the Site or the Toll System Field Equipment, Service Provider shall consider such comments and amendments, modifications and changes and discuss them with Owner. Service Provider shall incorporate those comments, amendments, modifications and changes with which it agrees, acting reasonably, to the extent that such comments, amendments, modifications or changes comply with Applicable Laws.

24.7 Management Organizations

- (a) Service Provider shall provide, and shall ensure that all Service Provider Parties provide, to Owner, as required to keep such information current, the names of the management teams responsible for the provision of the Service Provider Services.

25. GOODS, TOLL SYSTEM FIELD EQUIPMENT, CONSUMABLES AND MATERIALS

25.1 Standards

- (a) Service Provider shall cause sufficient stocks of goods, consumables, Toll System Field Equipment and materials to be held in compliance with its obligations under this Services Agreement.

25.2 Hazardous Substances and Materials

- (a) Except to the extent required pursuant to the Output Specifications, Service Provider shall not bring, install, keep, maintain or use in or on Site or the Toll System Field Equipment, or cause, authorize or permit any Person to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus (“**Hazardous Materials**”), which is likely to cause or in fact causes:
 - (i) material damage to the Site or the Toll System Field Equipment;
 - (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Toll System Field Equipment;

- (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Site or the Toll System Field Equipment; or
- (iv) an adverse effect on the health or well-being of any Owner Party or other Person,

and shall use commercially reasonable efforts to ensure, by directions to staff and otherwise, that all Hazardous Materials in or on the Toll System Field Equipment are operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.
- (b) Service Provider shall not bring, install, keep, maintain or use, or cause, authorize or permit any Person to bring, install, keep, maintain or use in or on the Toll System Field Equipment any Hazardous Substance or Hazardous Materials without the prior written consent of Owner and unless Service Provider has complied with, and continues to comply with, all Applicable Law.
- (c) Where applicable, Service Provider shall comply with Owner policies and all Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
 - (i) maintaining a library of MSDS on the Site and making MSDS labels available to all workers and Owner, and making and posting workplace labels where applicable, for all Hazardous Substances and Hazardous Materials relating to WHMIS; and
 - (ii) ensuring that Hazardous Substances are only shipped in accordance with Applicable Law governing the transportation of Hazardous Substances.
- (d) Owner shall make available to Service Provider, on request by Service Provider, a list of Hazardous Substances and Hazardous Materials prepared by Owner as required by any Applicable Law regarding WHMIS and the transportation of Hazardous Substances.
- (e) Service Provider shall:
 - (i) ensure that all Hazardous Substances and Hazardous Materials used or stored on the Site shall be kept in accordance with all Applicable Law, Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
 - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Toll System Field Equipment or into any conducting media or device serving the Toll System Field Equipment, including to:
 - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and

- (B) prevent any adverse effect on the health or well-being of any Person, including any Owner Party or visitors to the Toll System Field Equipment,

in so far as such Hazardous Substance or Hazardous Material is, or should be, under the control of Service Provider pursuant to this Services Agreement.

- (f) This Section 25.2 applies from and after:
 - (i) Phase 1 Substantial Completion with respect to Phase 1 construction,
 - (ii) Phase 2a Substantial Completion with respect to Phase 2a construction, and
 - (iii) Phase 2b Substantial Completion with respect to Phase 2b construction,

as applicable, and shall not extend to Hazardous Substances or Hazardous Materials that are produced, brought, installed, kept, maintained or used in relation to the Site, except to the extent that such Hazardous Substances or Hazardous Materials are, or should be, the responsibility of Service Provider or under the control of Service Provider under this Services Agreement.

- (g) For greater certainty, in the event of a claim relating to Contamination caused by the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, each Party shall bear a proportion of liability based on that Party's degree of fault as agreed by the Parties or determined in accordance with Schedule 20 - Dispute Resolution Procedure.

26. MONITORING

26.1 Monitoring of Performance

- (a) Service Provider shall monitor the performance of the Service Provider Services in the manner and at the frequencies set out in the Output Specifications and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Service Provider's obligations, as set out in the Output Specifications and the Payment Mechanism, Service Provider shall, as reasonably requested by Owner, provide the Owner Representative with relevant particulars of any aspects of Service Provider's performance which fail to meet the requirements of this Services Agreement.
- (b) Owner may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

26.2 Service Failure Points

- (a) In each Payment Period, Service Provider shall measure the performance of the Service Provider Services, and based on the performance of the Service Provider Services in the

applicable Payment Period, Service Failure Points may be awarded in respect of a Service Provider Service in accordance with Schedule 14 – Payment Mechanism.

26.3 Warning Notices

- (a) Without prejudice to Owner’s rights under Section 39 and any other rights under this Services Agreement, if Service Provider has accrued more than **[Redacted]** Service Failure Points in any Payment Period, then Owner may give written notice (a “**Warning Notice**”) to Service Provider setting out the matter or matters giving rise to such notice and stating that it is a “**Warning Notice**”.

26.4 Monitoring Notices

- (a) Without prejudice to Owner’s rights under Section 39 and any other rights under this Services Agreement, if, at any time and from time to time, Service Provider receives **[Redacted]** Warning Notices in any rolling twelve-month period, Owner may, by notice (a “**Monitoring Notice**”) to Service Provider require Service Provider to increase the level of Service Provider’s monitoring of its own performance of its obligations under this Services Agreement in respect of the relevant Service Provider Service until such time as Service Provider shall have demonstrated to the reasonable satisfaction of Owner that it is performing, and is capable of continuing to perform, its obligations under this Services Agreement in respect of the relevant Service Provider Service.
- (b) Owner may give a Warning Notice pursuant to Section 26.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
 - (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Service Provider in monitoring its own performance;
 - (ii) if Service Provider, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that Owner was not entitled to give the Monitoring Notice, Service Provider shall, within 3 Business Days of the receipt of the Monitoring Notice, notify Owner in writing of the matters objected to and any changes necessary in order to prevent prejudice to Service Provider’s performance of its obligations under this Services Agreement;
 - (iii) if Service Provider gives Owner a notice under Section 26.4(c)(ii), the measures to be taken by Service Provider shall be agreed between the Parties or, in the absence of agreement within ten Business Days of Owner’s receipt of such notice, may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure;

- (iv) if Service Provider fails to increase Service Provider's monitoring as provided herein, Owner may perform such monitoring save where Service Provider, acting in good faith, is pursuing a Dispute pursuant to Section 26.4(c)(iii);
 - (v) if it is determined in accordance with Schedule 20 - Dispute Resolution Procedure that Owner was entitled to give the applicable Monitoring Notice, Service Provider shall bear its own costs and reimburse Owner for any reasonable costs and expenses incurred by or on behalf of Owner in relation to the giving of such Monitoring Notice; and
 - (vi) if it is determined in accordance with Schedule 20 - Dispute Resolution Procedure that Owner was not entitled to give the applicable Monitoring Notice, Owner shall bear its own costs and reimburse Service Provider for any reasonable costs and expenses incurred by or on behalf of Service Provider in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Service Provider shall have demonstrated to the reasonable satisfaction of Owner that Service Provider has performed its obligations under this Services Agreement for a period of **[Redacted]** consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Service Provider Service, Service Provider may apply for the withdrawal of such Monitoring Notice. If Owner is satisfied, acting reasonably, that Service Provider has satisfied the aforesaid requirements, it shall, within ten Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 20 - Dispute Resolution Procedure that Owner was not entitled to give any Monitoring Notice, Owner shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

26.5 Remedial Action Performance Plan

- (a) Without prejudice to Owner's rights under Section 38 and any other rights under this Services Agreement, if at any time Service Provider has accrued more than **[Redacted]** Service Failure Points in any three month rolling Payment Period, Service Provider will submit a written remedial action performance plan to the Owner indicating the actions Service Provider will take to address performance problems.

27. OWNER'S REMEDIAL RIGHTS

27.1 Exercise of Remedial Rights

- (a) Owner may exercise all rights set out in this Section 27 at any time and from time to time if:

- (i) Owner, acting reasonably, considers that a breach by Service Provider of any obligation under this Services Agreement, or any act or omission on the part of Service Provider or any Service Provider Party:
 - (A) does or can reasonably be expected to create a serious threat to the health or safety of any user of any part of or the whole of the Toll System Field Equipment or Highway 407 East;
 - (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Service Provider Services; or
 - (C) may potentially compromise (1) the Province's reputation or integrity, (2) the ability of the Province to conduct its business, or (3) the confidentiality of any Confidential Information of any Government Entity or any Personal Information,

provided that:

- (D) in respect of a breach by Service Provider of any obligation under this Services Agreement, or any act or omission on the part of any Service Provider Party, which can reasonably be expected to cause any of the consequences set out in Sections 27.1(a)(i)(A) or 27.1(a)(i)(B), Owner shall not exercise its rights under this Section 27 unless Service Provider has failed to cure the relevant breach, or, in respect of any Service Provider Party, act or omission within five Business Days of notice from Owner or, if such breach, or, in respect of any Service Provider Party, act or omission cannot reasonably be cured within such five Business Day period, Service Provider thereafter fails to diligently and continuously pursue such cure and to cure such breach, or, in respect of any Service Provider Party, act or omission within a reasonable period thereafter, provided that Service Provider shall not be entitled to a cure period if any of the consequences set out in Sections 27.1(a)(i)(A) or 27.1(a)(i)(B) actually occur;
- (E) in respect of Section 27.1(a)(i)(C)(1), Owner shall not exercise its rights under this Section 27 unless Service Provider has failed to cure the relevant breach, act or omission within five Business Days of notice from Owner or, if such breach, act or omission cannot reasonably be cured within such five Business Day period, Service Provider thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter; and
- (F) in respect of Section 27.1(a)(i)(C)(1), Owner shall not exercise its rights under this Section 27 in respect of any act or omission of any Service Provider Party under written contract with Service Provider as of the Effective Date;

- (ii) while a Monitoring Notice is in effect that is not being disputed by Service Provider, acting in good faith, Service Provider receives a Warning Notice in respect of the same or similar Service Provider Service;
- (iii) if, pursuant to Section 23.7, a Performance Audit that is not being disputed by Service Provider, acting in good faith, shows that Service Provider has not performed or is not performing its obligations and Service Provider has failed to perform the rectification or Maintenance Work as provided pursuant to Section 23.7(e)(i); or
- (iv) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations.

27.2 Emergency

- (a) Notwithstanding that Service Provider is not in breach of its obligations under this Services Agreement, Owner may exercise all of the rights set out in this Section 27 at any time and from time to time during the Operational Term if Owner, acting reasonably, considers the circumstances to constitute an Emergency in respect of the Site or the Toll System Field Equipment.

27.3 Rectification

- (a) Without prejudice to Owner's rights under Section 39 and any other rights under this Services Agreement, in any of the circumstances set out in Section 27.1 or 27.2, Owner may, by written notice, advise Service Provider of occurrence of such circumstance. Upon receipt of such notice, Service Provider will take such steps as may reasonably be required to rectify the deficiency contemplated in the circumstances set out in Section 27.1 or 27.2 as soon as reasonably practicable.
- (b) If Owner gives notice to Service Provider pursuant to Section 27.3(a) and either:
 - (i) Service Provider does not confirm, within five Business Days of such notice or such shorter period as is appropriate in the case of an Emergency in respect of the Site or the Toll System Field Equipment that it is willing to take the steps required in such notice or present an alternative plan to Owner to mitigate, rectify and protect against such circumstances that Owner may accept or reject acting reasonably; or
 - (ii) Service Provider fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as Owner, acting reasonably, shall think fit,

then Owner may take such steps as it considers to be appropriate, acting reasonably, including requiring the termination and replacement of a Service Provider Party, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Service Provider Services to the

standards required by this Services Agreement, and the provisions of Section 36, including Section 36.1(a)(iv) and Section 36.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 27.3, in the event of an Emergency in respect of the Site or the Toll System Field Equipment, the notice under Section 27.3(a) shall be given as promptly as possible having regard to the nature of the Emergency in respect of the Site or the Toll System Field Equipment and Owner may, prior to Service Provider's confirmation under Section 27.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency in respect of the Site or the Toll System Field Equipment.
- (d) Where Owner considers it to be necessary to do so, the steps which Owner may take pursuant to this Section 27.3 subsequent to the provision of the notice under Section 27.3(a) unless the notice is given at a later time as provided in Section 27.3(c), may, at Owner's option, include the partial or total suspension of Service Provider's right and obligation to deliver any part of the Service Provider Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Service Provider Services), and the provisions of Section 36, including Section 36.1(a)(iv) and Section 36.2, shall apply, but such suspension shall be only for so long as, as applicable, the circumstances referred to in Section 27.1 or 27.2 subsist.

27.4 Costs and Expenses

- (a) Subject to Owner's obligations pursuant to Sections 27.5 and 27.6:
 - (i) Service Provider shall bear all costs and expenses incurred by Service Provider in relation to the exercise of Owner's rights pursuant to this Section 27; and
 - (ii) Service Provider shall reimburse Owner for all reasonable costs and expenses incurred by Owner in relation to the exercise of Owner's rights pursuant to this Section 27.

27.5 Reimbursement Events

- (a) In this Section 27.5, a "**Reimbursement Event**" means:
 - (i) an act or omission of Service Provider or any Service Provider Party or a breach of any obligation under this Services Agreement, but only to the extent such act, omission or breach is caused by Owner, an Owner Party or any other Government Entity; or
 - (ii) an Emergency (other than an Emergency that is caused by or attributable to an act or omission of Service Provider or a Service Provider Party).
- (b) If Owner either takes steps itself or requires Service Provider to take steps in accordance with this Section 27 as a result of a Reimbursement Event:

- (i) Owner shall reimburse Service Provider for the reasonable costs and expenses incurred by Service Provider in relation to the exercise of Owner's rights pursuant to this Section 27 that would not otherwise have been incurred by Service Provider in the proper performance of its obligations under this Services Agreement; and
 - (ii) subject to Section 27.5(c), Owner shall bear all costs and expenses incurred by Owner in relation to the exercise of Owner's rights pursuant to this Section 27.
- (c) If, in exercising its rights pursuant to this Section 27, Owner performs any part of the Service Provider Services either itself or by engaging others, Owner shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Service Provider Services.
- (d) Any amount payable to Service Provider pursuant to this Section 27.5 shall be reduced by any amount which Service Provider or a Service Provider Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Services Agreement in respect of insurance or the terms of any policy of insurance required under this Services Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

27.6 Reimbursement if Improper Exercise of Rights

- (a) If Owner exercises its rights pursuant to this Section 27, but Owner was not entitled to do so, Owner shall reimburse Service Provider for the reasonable costs and expenses directly incurred by Service Provider over and above those that would otherwise have been incurred by Service Provider in the proper performance of its obligations under this Services Agreement and that are directly and reasonably incurred by Service Provider in complying with those written requirements of Owner issued as a result of Owner having exercised such rights.
- (b) Service Provider acknowledges and agrees that Service Provider has no right to require a determination of whether or not Owner is entitled to exercise its rights pursuant to this Section 27 before taking any such action required pursuant to this Section 27. Only concurrently with or after complying with Owner's requirements shall Service Provider be entitled to refer any Dispute for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

28. PRICE AND ADJUSTMENTS

28.1 Price and Adjustments

- (a) The Target Price for Service Provider's provision of the Works, exclusive of HST, is set out in Schedule 25 – Target Price and Base Progress Payments, as adjusted herein.
- (b) The price for Service Provider's provision of the Service Provider Services, exclusive of HST, is the Monthly Service Payment, as adjusted herein.

29. PAYMENT

29.1 Monthly Service Payments

- (a) Subject to and in accordance with this Services Agreement, including this Section 29 and Schedule 14 - Payment Mechanism, Owner shall pay Service Provider the all-inclusive Monthly Service Payments for the performance of all of the Service Provider Services.
- (b) Notwithstanding any Variation, except as may be mutually agreed upon in writing between the Parties, no Variation shall reduce the Monthly Service Payment to be less than \$[Redacted], index-linked, in any Contract Month.

29.2 Payment Adjustments

- (a) Service Provider acknowledges and agrees that:
 - (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 14 - Payment Mechanism; and
 - (ii) such adjustments are integral to the provisions of this Services Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 14 - Payment Mechanism is invalid and unenforceable, and the Province enacts an Applicable Law that is a Change in Law to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits Owner to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Service Provider shall not be entitled to any compensation hereunder for such Change in Law.

29.3 Target Price Payments

- (a) Owner shall pay to Service Provider the Target Price, as adjusted herein, plus, for clarity, applicable HST, as follows:
 - (i) the Base Progress Payments in accordance with Schedule 25 – Target Price and Base Progress Payments, provided that there shall be no more than [Redacted] Base Progress Payments in any Contract Year;
 - (ii) the Phase 1 Substantial Completion Payment on the Phase 1 Payment Commencement Date;
 - (iii) the Phase 2b Substantial Completion Payment on the Phase 2b Payment Commencement Date; and
 - (iv) the Target Price Reduction Incentive.

29.4 Payment Commencement

- (a) Subject to and in accordance with this Services Agreement, Owner shall pay Service Provider the Monthly Service Payments calculated as being due to Service Provider in respect of each Payment Period following the Phase 1 Payment Commencement Date in accordance with Schedule 14 - Payment Mechanism.
- (b) Service Provider shall not be entitled to any Monthly Service Payments for any period prior to the Phase 1 Payment Commencement Date.

29.5 Invoicing and Payment Arrangements

- (a) Within **[Redacted]** Business Days following the end of each Payment Period, Service Provider shall issue to Owner an invoice for the amount of the Monthly Service Payment owing by Owner to Service Provider for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Service Provider shall include with each invoice such supporting documentation as Owner may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
 - (i) the Monthly Service Payment payable in respect of the applicable Payment Period;
 - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by Owner;
 - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 20 - Dispute Resolution Procedure;
 - (iv) any amount owing to Owner under this Services Agreement;
 - (v) any amount owing to Service Provider under this Services Agreement; and
 - (vi) the net amount owing by Owner to Service Provider, or by Service Provider to Owner, as applicable.
- (d) HST shall be shown separately on all invoices from Service Provider, together with Service Provider's HST registration number.
- (e) Any property or services provided to or sold to Owner, payment for which is subject to HST, shall be shown as separate line items.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.

- (g) The Owner Representative shall review each invoice submitted in accordance with this Section 29.5. Owner shall pay the amount stated in such invoice on the first Business Day of the Payment Period next following the Payment Period in which the invoice is received. Any such payment shall be subject to adjustment pursuant to Section 29.5(k).
- (h) Owner shall not be obligated to make any payment to Service Provider unless all conditions precedent applicable to such payment under this Services Agreement have been satisfied by Service Provider. Further, Owner shall not be obligated to pay an invoice delivered by Service Provider after the second Payment Period following the Phase 1 Payment Commencement Date until Service Provider has delivered the Payment Adjustment Report referred to in Section 29.5(i) for the previous Payment Period. In the event that Service Provider delivers any Payment Adjustment Report later than the stipulated date in Section 29.5(i), Owner's obligation to pay the invoice issued by Service Provider for the immediately following Payment Period shall be extended by the number of days by which Service Provider was late in delivering the applicable Payment Adjustment Report to Owner.
- (i) Within **[Redacted]** Business Days following the end of each Payment Period, Service Provider shall also submit to Owner:
 - (i) a Performance Monitoring Report in respect of the Payment Period just ended; and
 - (ii) a report (a "**Payment Adjustment Report**") setting out any adjustments required between the actual Monthly Service Payment determined by Service Provider to be owing by Owner to Service Provider in respect of the Payment Period just ended and the amount that was paid by Owner in respect of the immediately prior Payment Period including such details as Owner reasonably requires.
- (j) Service Provider shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) Within **[Redacted]** Business Days of receipt by Owner of the Payment Adjustment Report, the Owner Representative shall:
 - (i) determine and advise Service Provider that the Payment Adjustment Report is approved by Owner, in which case the adjustments set out therein will be reflected by Service Provider in the invoice next issued by Service Provider; or
 - (ii) if Owner disputes Service Provider's entitlement to any part of the amounts set out therein, notify Service Provider in writing of that part of the amounts (insofar as at the time of such notice Owner is reasonably able to quantify it) which Owner disputes and submit to Service Provider such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, Owner shall withhold payment of any disputed amount pending agreement or determination of Service Provider's entitlement to the disputed amount in accordance with Section 29.8.

- (l) In respect of all invoices issued by Service Provider for payment from and after the Phase 1 Payment Commencement Date through to the Payment Period ending no less than 45 days following the date of the Final Phase 2b Completion Certificate, Service Provider shall cause its solicitors to:
 - (i) subsearch title to the Site as at noon of the day that each payment is due; and
 - (ii) promptly send to Owner a statutory declaration confirming no liens, pursuant to the CLA have been registered against the Site in connection with the Works.

Service Provider acknowledges that if a claim for lien has been registered against the Site, the provisions of Section 12.3 shall apply.

29.6 Electronic Invoicing

- (a) Service Provider shall cooperate with the reasonable requirements of Owner and shall submit its invoices and all other documentation relating to this Services Agreement in a form as is reasonably required to be compatible with Owner's information systems.

29.7 Final Payment Periods

- (a) At the beginning of each of the final three Payment Periods during the Project Term, Owner shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. Owner may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Service Provider during each of the final three Payment Periods.
- (b) Within **[Redacted]** Business Days of receipt by Owner of the applicable Payment Adjustment Report for each of the final three Payment Periods, the Owner Representative shall:
 - (i) determine and advise Service Provider that the Payment Adjustment Report is approved by Owner, and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount Owner previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Owner or Service Provider shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
 - (ii) if Owner disputes Service Provider's entitlement to any part of the amounts set out therein, notify Service Provider in writing of that part of the amounts (insofar as at the time of such notice Owner is reasonably able to quantify it) which Owner disputes and submit to Service Provider such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Owner Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount Owner previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Owner or Service Provider shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that

Owner shall withhold payment of any disputed amount pending agreement or determination of Service Provider's entitlement to the disputed amount in accordance with Section 29.8.

29.8 Disputes

- (a) If Owner, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Service Provider in writing of that part of the amounts (insofar as at the time of such notice Owner is reasonably able to quantify it) which Owner disputes and submit to Service Provider such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within ten Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by Owner that is determined not to have been payable shall be paid forthwith by Service Provider to Owner, together with interest on such amount calculated in accordance with Section 29.11 on the basis that the due date was the date of the overpayment by Owner and any amount which has been withheld by Owner that is determined to have been payable shall be paid forthwith by Owner to Service Provider, together with interest on such amount calculated in accordance with Section 29.11 on the basis that the due date was the date upon which such amount became payable to Service Provider.

29.9 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Services Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Service Provider shall maintain all holdbacks required pursuant to the CLA and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

29.10 Manner of Payment

- (a) All payments under this Services Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on or before the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.
- (b) If the due date is not a banking day in either Ontario or the jurisdiction in which the recipient's bank is located, then the electronic transfer shall be made on the banking day immediately succeeding such day.

29.11 Interest on Overdue Payments

- (a) Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made by the other Party pursuant to the terms of this Services Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

29.12 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
- (i) Owner to set-off against any amounts otherwise due to Service Provider pursuant to the terms of this Services Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 49) which are due to Owner by Service Provider pursuant to the terms of this Services Agreement; and
 - (ii) Service Provider to set-off against any amounts otherwise due to Owner pursuant to the terms of this Services Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 49) which are due to Service Provider by Owner pursuant to the terms of this Services Agreement.

29.13 Effect of Payment

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Service Provider of any of its obligations under this Services Agreement, nor shall it operate to relieve Service Provider from the performance of any of its obligations under this Services Agreement which have not been performed.

29.14 Audit of Performance of Project Operations

- (a) Without limiting Owner's rights and Service Provider's obligations pursuant to Section 31.2, at any time and from time to time until 180 days after the Expiry Date, provided, however, not more than once annually or as otherwise provided below, Owner may give prior written notice to require Service Provider to permit an audit, during Service Provider's normal business hours, of any matter relating to performance of the Project Operations and payments by or to Owner within the seven year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to solely to performance of this Services Agreement and payments hereunder to verify their accuracy, correctness and completeness. Where such audit has been completed in respect of any period prior to the date of such notice, such period shall not be subject to any subsequent audit unless the subject matter of such subsequent audit is materially different than the original audit. The Parties acknowledge and agree that Owner shall have the right within the first 365 days following:
- (i) Phase 1 Substantial Completion to perform a maximum of **[Redacted]**,

- (ii) Phase 2a Substantial Completion to perform a maximum of **[Redacted]**, and
- (iii) Phase 2b Substantial Completion to perform a maximum of **[Redacted]**,
- (b) Owner or its designate shall appoint an auditor to perform and complete such audit at Owner's cost and expense and pursuant to terms of reference determined by Owner.
- (c) Within a reasonable time (which shall not exceed **[Redacted]** Business Days (unless otherwise agreed by the Parties, acting reasonably)) following receipt of a notice referred to in Section 29.14(a), Service Provider shall make available to Owner's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments. Owner shall take into account any current audits of Service Provider and act reasonably in delivering a notice referred to in Section 29.14(a), with a view to working with Service Provider to minimize potential disruption caused by such audit.
- (d) Owner shall notify Service Provider of the results of the audit, and if Owner's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Service Provider's right to dispute the same in accordance with Schedule 20 - Dispute Resolution Procedure:
 - (i) Service Provider shall:
 - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
 - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by Owner, reimburse Owner for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
 - (I) the actual costs relating to the auditor and audit; or
 - (II) an amount equal to the amount of any overpayment;
 - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by Owner, Service Provider shall reimburse Owner for the amount of such overpayment, together with interest thereon at the Default Interest Rate from the date of such overpayment; and
 - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by Owner, Owner shall pay Service Provider the amount of such underpayment, together with interest thereon at the Default Interest Rate from the date of such underpayment.

29.15 No Other Entitlement

- (a) Service Provider shall not be entitled to any license fees, payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Services Agreement, except as specifically and expressly set out in this Services Agreement.

30. TAXES

30.1 Taxes

- (a) All amounts specified in this Services Agreement are expressed exclusive of HST but inclusive of all other Taxes. Except as specified in Section 30.1(c), applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination. Notwithstanding the preceding sentence and any other provision of this Services Agreement, and for greater certainty, the Monthly Service Payments and all other payments hereunder or under agreements contemplated hereunder shall be reduced by the amount of any required withholdings under the *Income Tax Act* (Canada) and regulations thereunder, and any other applicable provincial tax legislation.
- (b) Owner shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or the Toll System Field Equipment.
- (c) Within **[Redacted]** of the end of the month in which Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, occurs, Owner shall pay to Service Provider all HST to the extent payable by Owner in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the Works for remittance to the Canada Revenue Agency, which amount, if any, will be set out in an invoice issued by Service Provider to Owner upon the occurrence of Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable.
- (d) Owner shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Owner upon and in connection with payments by Owner to Service Provider under this Services Agreement.

30.2 Changes in Scope of HST

- (a) If, as a result of a Change in Law, the provision of any goods or services by Service Provider in connection with the performance of the Project Operations that was not subject to HST as at the Effective Date becomes subject to HST, Owner will pay to Service Provider the amount of such HST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Service Provider.

30.3 Changes in Rate of HST

- (a) If, as a result of a Change in Law, the rate of HST chargeable to Owner as at the Effective Date in respect of or relating to the supply of any goods or services by Service

Provider in connection with the performance of the Project Operations is increased, Owner will pay to Service Provider, for each Payment Period thereafter, an amount on account of or in respect of such HST, calculated at a rate which is equal to the difference between the rate in effect at the time of payment of the HST and the rate in effect immediately prior to the Change in Law.

- (b) If, as a result of a Change in Law, the rate of HST chargeable to Owner as at the Effective Date in respect of or relating to the supply of any goods or services by Service Provider in connection with the performance of the Project Operations is decreased, Service Provider will pay to Owner, for each Payment Period thereafter, an amount on account of or in respect of such HST, calculated at a rate which is equal to the difference between the rate in effect immediately prior to the Change in Law and the rate in effect at the time of payment of the HST.

30.4 Changes in Recoverability of Tax Credits

- (a) Owner will pay to Service Provider from time to time, as the same is incurred by Service Provider, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Service Provider will pay to Owner from time to time, as the same is incurred by Service Provider, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 30.4, the term “**Irrecoverable Tax**” means HST incurred by Service Provider in respect of the supply of any good or service to Owner which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Service Provider in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Service Provider is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST (as the case may be).
- (c) For the purposes of this Section 30.4, the term “**Recoverable Tax**” means HST incurred by Service Provider in respect of the supply of any good or service to Owner which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Service Provider in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Service Provider is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST (as the case may be).

30.5 Information and Assistance Provided by Service Provider

- (a) Service Provider shall, at Owner’s request and cost, assist Owner in applying for and obtaining all remissions and credits of HST to which Owner is entitled, if any. In addition, where Service Provider has acquired tangible Personal property (as defined in the *Retail Sales Tax Act* (Ontario)) for Owner, Service Provider shall, if requested by Owner, provide invoices and such other documentation as Owner may require to claim rebates or exemptions in respect of HST relating to such tangible Personal property.
- (b) Owner may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Services Agreement. Service Provider shall, at Owner’s cost, assist Owner in making any

applications for such global or general exemption, waiver, remission or refund and shall provide Owner with such documentation as Owner may reasonably require to support such application and, in any event, shall provide such consent as Owner may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by Owner through such application shall accrue to the sole benefit of Owner. In respect of HST, where Owner has provided to Service Provider valid certification for HST exemption, Service Provider shall not collect such HST and, if such HST is included in the payments hereunder (including the Monthly Service Payments), Service Provider shall reduce such payments accordingly. If it is subsequently determined that such HST is applicable, then Owner shall pay such HST or reimburse Service Provider therefor.

- (c) Service Provider will provide Owner with any information reasonably requested by Owner from time to time in relation to the HST chargeable in accordance with this Services Agreement and payable by Owner to Service Provider from time to time.

30.6 Residency – *Income Tax Act (Canada)*

- (a) Service Provider shall not undertake any action or transaction that, if undertaken, would cause or result in Service Provider becoming a Non-Resident without Owner's prior written consent, which consent may be withheld in Owner's Sole Discretion.

30.7 Withholding Taxes

- (a) Service Provider shall not, without the prior written consent of Owner (which consent may be withheld in Owner's Sole Discretion), undertake any action or transaction that, if undertaken, would cause or result in Owner or any Owner Party having any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Service Provider or any Service Provider Party under this Services Agreement or under any other Project document.

30.8 Non-Resident Taxes

- (a) If Service Provider becomes a Non-Resident, or if Owner or an Owner Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Service Provider or a Service Provider Party by Owner or an Owner Party under the Services Agreement, then Owner or any Owner Party shall be entitled to make any applicable deductions or withholdings from any amount paid or credited or to be paid or credited to Service Provider or a Service Provider Party on or after the date on which (i) Service Provider or the Service Provider Party becomes a Non-Resident and at all times while it remains a Non-Resident; and (ii) Owner or the Owner Party is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by Owner or any Owner Party under this Services Agreement or under any other Project Document to Service Provider or a Service Provider Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Service Provider becomes a Non-Resident, or (ii) Owner or an Owner Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Service Provider or a Service Provider Party by Owner or an Owner Party under the Services Agreement, Service Provider shall, in each case, indemnify and hold harmless Owner and the Owner Parties and the other Government Entities for (a) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Owner or any Owner Party in respect of any amounts paid or credited by Owner or an Owner Party to Service Provider or any Service Provider Party under this Services Agreement or under any other Project Document as a result of either of the foregoing items, and (b) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Tax Liabilities**”). Payment under this indemnification shall be made within 30 days from the date Owner makes written demand therefor. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Tax Liabilities submitted to Service Provider by Owner shall be conclusive evidence, absent manifest error, of the amount due from Service Provider to Owner. Owner shall be entitled to exercise its rights of set-off under Section 29.12 against any amounts owing under this indemnification.

31. RECORDS, INFORMATION AND AUDIT

31.1 Records Provisions

- (a) Service Provider shall comply with Schedule 19 - Record Provisions.

31.2 Information and General Audit Rights

- (a) Service Provider shall provide and shall cause the Service Provider Parties to provide, to Owner all information, reports, documents, records and the like created solely in connection with this Services Agreement, including as referred to in Schedule 19 - Record Provisions, in the possession of, or available to, Service Provider solely in connection with this Services Agreement as Owner may reasonably require from time to time for any purpose in connection with this Services Agreement, other than Sensitive Information. Service Provider shall ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, any Service Provider Party shall be available to Service Provider and Service Provider shall include relevant terms in all Subcontracts to this effect.
- (b) Service Provider shall also provide to Owner, and shall cause the Service Provider Parties to provide, to Owner (at Owner’s reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 31.2(a) which subsequently come into the possession of, or become available to, Service Provider or Service Provider Parties, as Owner may reasonably require from time to time to enable Owner to provide reports, notices, returns and the like pursuant to any Applicable Law, including information

and documentation pertaining to the physical condition of the Toll System Field Equipment, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters, other than Sensitive Information.

- (c) Service Provider shall promptly after receipt provide Owner with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Service Provider Party from any Governmental Authority in relation to any of the Project Operations or the Toll System Field Equipment, and Service Provider shall include relevant terms in all Subcontracts to this effect.
- (d) Service Provider shall promptly notify Owner of any actions, suits, proceedings, or investigations commenced, pending or threatened against Service Provider or, to Service Provider's knowledge, any Service Provider Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) 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 Service Provider or in any impairment of its ability to perform its obligations under this Services Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Service Provider referred to in Schedule 19 - Record Provisions, which are required to be provided to or available to Owner hereunder, shall be subject and open to inspection and audit by Owner at any time and from time to time, which inspection and audit shall take place during normal business hours and at Service Provider's normal places of business unless Owner and Service Provider otherwise agree. Except as otherwise provided herein, all of Owner's costs for the inspections, audits and monitoring shall be borne by Owner.
- (f) In conducting an audit of Service Provider under Section 31.2(e) or as otherwise provided under this Services Agreement, Owner shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at Owner's reasonable cost) of all books and records of Service Provider required to be provided to or available to Owner hereunder, upon reasonable notice (which shall not exceed 20 Business Days (unless otherwise agreed by the Parties, acting reasonably)) and at reasonable times. Service Provider shall fully cooperate with Owner and its auditors in the conduct of any audits, including by making available all such records and accounts required to be provided to or available to Owner hereunder (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Service Provider further agrees to promptly review and settle with Owner all matters arising from such audits, including the refunding of monies to Owner where applicable. At the reasonable request of Owner's auditors, Service Provider shall provide such information, reports, documents and records required to be provided by Service Provider hereunder as Owner's auditors may reasonably require, other than Sensitive Information.
- (g) Owner's rights pursuant to this Section 31.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Services Agreement.

- (h) Owner's rights pursuant to this Section 31.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.
- (i) Owner may not more than once annually require Service Provider to produce reports contemplated in this Services Agreement for any three month period, accompanied by an opinion expressed by Service Provider's external auditors (or such other external auditor selected by Service Provider acceptable to Owner) that (i) Highway 407 East financial reports contemplated by Schedule 28 – Output Specifications, are fairly presented in all material respects and (ii) to the extent such auditors are prepared to do so, the Service Provider's performance of any and all parts of the Works and the Service Provider Services are fully compliant with this Services Agreement, and Service Provider shall prepare and deliver such reports and cause such opinions to be rendered and delivered. In the event Owner is not satisfied with such reports and opinions, Owner shall have the right to select an independent third party auditor to audit such reports and performance and Service Provider shall cooperate with, and provide access to information required by, such independent third party auditor to the extent that Service Provider is required to provide such information to Owner hereunder.
- (j) Service Provider shall institute and maintain policies and procedures to prevent and detect errors and fraud over the performance and operation of the Service Provider Services and billing and revenue remittance process, and to identify and monitor compliance with the requirements as indicated in this Services Agreement. In addition, Service Provider shall ensure that payment transactions are properly recorded in the accounting records and maintain internal controls sufficient to permit the preparation of billing and revenue remittance reports.

32. CHANGES IN LAW

32.1 Performance after Change in Law

- (a) Following any and all Changes in Law, Service Provider shall perform the Project Operations in accordance with the terms of this Services Agreement, including in compliance with Applicable Law.

32.2 Works Change in Law

- (a) On the occurrence of a Works Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
 - (ii) the Parties shall meet within ten Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within ten Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 20 - Dispute Resolution Procedure; and

- (iii) Owner shall, within ten Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 15 - Variation Procedure shall apply except that:
 - (A) Service Provider shall be responsible for obtaining all Development Approvals and Permits, Licences and Approvals required in respect of the Variation;
 - (B) Owner shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
 - (C) Service Provider shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
 - (D) Service Provider shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Services Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 15 - Variation Procedure.

32.3 Relevant Change in Law

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Service Provider of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 32.3.
- (b) On the occurrence of a Relevant Change in Law:
 - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
 - (ii) the Parties shall meet within ten Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within ten Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 20 - Dispute Resolution Procedure; and
 - (iii) Owner shall, within ten Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 15 - Variation Procedure shall apply except that:
 - (A) Service Provider shall be responsible for obtaining all Development Approvals and Permits, Licences and Approvals required in respect of the Variation;

- (B) Owner shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
- (C) Service Provider shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
- (D) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Services Agreement:
 - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
 - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (E) any entitlement to compensation payable shall be in accordance with this Section 32.3(b)(iii)(E) and any calculation of compensation shall take into consideration, *inter alia*:
 - (I) any failure by a Party to comply with Section 32.3(b)(iii)(D);
 - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Services Agreement;
 - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
 - (IV) any amount which Service Provider recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Services Agreement or the terms of any policy of insurance required under this Services Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Service Provider shall not be entitled to any payment or compensation or, except as provided in Section 34 or otherwise in this Services Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 32.3, and Section 35 shall be construed accordingly.

- (d) In relation to a Relevant Change in Law (other than a Relevant Works Change in Law) that results in a net increase or decrease in costs incurred by Service Provider in delivery of the Project Operations, taking into consideration, *inter alia*, Section 32.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[Redacted] (index linked) in that Contract Year, neither Owner nor Service Provider shall be entitled to any payment or compensation pursuant to this Section 32.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 34 or otherwise in this Services Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.
- (e) In relation to a Relevant Works Change in Law that results in a net increase or decrease in costs incurred by Service Provider in the delivery of the Project Operations, taking into consideration, among other things, Section 32.3(b)(iii)(E), if the cost impact of such Relevant Works Change in Law in a given Contract Year (in aggregate with all other such Relevant Works Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[Redacted] (index linked) in that Contract Year, neither Owner nor Service Provider shall be entitled to any payment or compensation pursuant to this Section 32.3 or otherwise in respect of the cost impact of that Relevant Works Change in Law in that Contract Year, or, except as provided in Section 34, any other relief in respect of such Relevant Works Change in Law in that Contract Year.

33. VARIATIONS

33.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Services Agreement, Schedule 15 - Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Service Provider shall, subject to and in accordance with Schedule 15 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Owner to Service Provider or any Service Provider Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Service Provider Services.
- (c) Without limiting Service Provider's obligations pursuant to Schedule 15 - Variation Procedure, Service Provider shall include in each Subcontract entered into after the Effective Date, and shall cause each Service Provider Party who has entered into a Subcontract after the Effective Date to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Service Provider to minimize the cost and impact of Variations, including Variations as to scope of Service Provider Services.

33.2 Innovation and Value Engineering

- (a) Service Provider acknowledges that Owner at all times desires to reduce the Monthly Service Payments and the overall cost to Owner of the Toll System Field Equipment and

- the Service Provider Services, and Service Provider agrees to cooperate, explore and work with Owner in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Service Provider, Service Provider may make a proposal (the “**Innovation Proposal**”) by notice to Owner.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
- (i) any Variation Enquiry initiated by Owner;
 - (ii) any Variation resulting from a Change in Law; or
- (d) The Innovation Proposal must:
- (i) set out sufficient detail to enable Owner to evaluate the Innovation Proposal in full;
 - (ii) specify Service Provider’s reasons and justification for proposing the Innovation Proposal;
 - (iii) request Owner to consult with Service Provider with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Owner requires as a result;
 - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Services Agreement, and the comparative advantages of each to Service Provider and Owner;
 - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
 - (vi) indicate if there are any dates by which a decision by Owner must be made;
 - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
 - (viii) include such other information and documentation as may be reasonably requested by Owner to fully evaluate and consider the Innovation Proposal.
- (e) Owner shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) a change in the Monthly Service Payments will occur;
 - (ii) the Innovation Proposal affects the quality of the Works, the Toll System Field Equipment or the Service Provider Services, or the likelihood of successful completion of the Works or delivery of the Service Provider Services;

- (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Toll System;
 - (iv) the Innovation Proposal will interfere with the relationship between Owner and third parties;
 - (v) the financial strength of Service Provider is sufficient to deliver the changed Works or perform the changed Service Provider Services, as applicable;
 - (vi) the residual value of the Toll System Field Equipment is affected;
 - (vii) the Innovation Proposal materially affects the risks or costs to which Owner is exposed; or
 - (viii) any other matter Owner considers relevant.
- (f) Owner may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Owner may, in its Sole Discretion, accept or reject any Innovation Proposal.
- (h) If Owner accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Services Agreement to give effect to the Innovation Proposal. For clarity, no modified Innovation Proposal may be accepted by Owner without the agreement of Service Provider.
- (i) Unless Owner specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 33.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Service Provider in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Service Provider, the Innovation Proposal causes or will cause the costs of Service Provider and/or of a Service Provider Party to decrease, the net savings in the costs of Service Provider and/or the Service Provider Party will be shared equally by Service Provider and Owner, and Owner's share of the net savings shall, if the Parties agree, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of Owner to decrease, the net savings in the costs of Owner will be shared as follows:
- (i) equally by Service Provider and Owner for the first five years; and
 - (ii) thereafter, Owner shall be entitled to the full benefit of the net savings in costs (if applicable),

and Service Provider's share of the net savings shall, at Owner's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

34. DELAY EVENTS

34.1 Definition

- (a) For the purposes of this Services Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date, Phase 2a Substantial Completion by the Scheduled Phase 2a Substantial Completion Date, or Phase 2b Substantial Completion by the Scheduled Phase 2b Substantial Completion Date:
- (i) the implementation of a Variation to the extent Service Provider has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
 - (ii) any breach by Owner of any of Owner's obligations under this Services Agreement (including any delay in Owner giving access to the Site pursuant to Section 11.1 or any obstruction of the rights afforded to Service Provider under Section 11.1 or any delay in Owner carrying out its obligations set forth in Schedule 8 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Service Provider or any Service Provider Party;
 - (iii) a requirement pursuant to Section 13.1(c) for Service Provider to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Services Agreement;
 - (iv) a requirement pursuant to Sections 13.2(b) or 13.2(c) for Service Provider to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Services Agreement;
 - (v) the execution of works on the Site not forming part of this Services Agreement by Owner, any Owner Party or any other Person permitted to execute such works by Owner or any Owner Party;
 - (vi) a requirement pursuant to Section 11.1 of Schedule 20 - Dispute Resolution Procedure for Service Provider to proceed in accordance with the direction of

Owner during the pendency of a Dispute, which Dispute is subsequently determined in Service Provider's favour;

- (vii) an event of Force Majeure;
- (viii) a Relief Event; or
- (ix) a Relevant Change in Law.

34.2 Consequences of a Delay Event

- (a) Service Provider shall provide written notice to the Owner Representative and the Independent Certifier within five Business Days of becoming aware of the occurrence of Delay Event. Service Provider shall, within ten Business Days after such notification, provide further written details to the Owner Representative and the Independent Certifier which shall include:
 - (i) a statement of which Delay Event the claim is based upon;
 - (ii) details of the circumstances from which the Delay Event arises;
 - (iii) details of the contemporary records which Service Provider shall maintain to substantiate its claim for extra time;
 - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial Completion Date, Scheduled Phase 2b Substantial Completion Date; and
 - (v) details of any measures which Service Provider proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within three Business Days of Service Provider receiving, or becoming aware of, any supplemental information which may further substantiate or support Service Provider's claim, Service Provider shall submit further particulars based on such information to the Owner Representative and the Independent Certifier.
- (c) The Owner Representative shall, after receipt of written details under Section 34.2(a), or of further particulars under Section 34.2(b), be entitled by written notice to require Service Provider to provide such further supporting particulars as the Owner Representative may reasonably consider necessary. Service Provider shall afford the Owner Representative and the Independent Certifier reasonable facilities for investigating the validity of Service Provider's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 34, the Owner Representative shall allow Service Provider an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial

Completion Date, or Scheduled Phase 2b Substantial Completion Date, as applicable, as soon as reasonably practicable and in any event within ten Business Days of the later of:

- (i) the date of receipt by the Owner Representative of Service Provider's notice given in accordance with Section 34.2(a) and the date of receipt of any further particulars (if such are required under Section 34.2(c)), whichever is later; and
 - (ii) the date of receipt by the Owner Representative of any supplemental information supplied by Service Provider in accordance with Section 34.2(b) and the date of receipt of any further particulars (if such are required under Section 34.2(c)), whichever is later.
- (e) If:
- (i) the Owner Representative declines to fix a revised Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial Completion Date, or Scheduled Phase 2b Substantial Completion Date, as applicable;
 - (ii) Service Provider considers that a different Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial Completion Date, or Scheduled Phase 2b Substantial Completion Date, as applicable, should be fixed; or
 - (iii) there is a dispute as to whether a Delay Event has occurred,

then Service Provider shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure.

34.3 Mitigation

- (a) If Service Provider is (or claims to be) affected by a Delay Event, Service Provider shall, and shall require all Service Provider Parties to, take and continue to take commercially reasonable steps:
 - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Services Agreement;
 - (ii) to continue to perform its obligations under this Services Agreement to the extent possible notwithstanding the Delay Event; and
 - (iii) to resume performance of its obligations under this Services Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Service Provider does not comply with its obligations under this Section 34.3 such failure shall be taken into account in determining Service Provider's entitlement to an extension of time and other relief pursuant to this Section 34.

34.4 Subsequent Phases

- (a) If Service Provider is entitled to a Delay Event, Service Provider shall only be entitled to relief pursuant to this Section 34 to the extent the Delay Event causes a delay in achieving Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date, Phase 2a Substantial Completion by the Scheduled Phase 2a Substantial Completion Date and/or Phase 2b Substantial Completion by the Scheduled Phase 2b Substantial Completion Date, as applicable, and not a Delay Event in a subsequent phase, if any. For greater clarity, the entitlement of a Delay Event in achieving Phase 1 Substantial Completion will not result in a Delay Event in achieving Phase 2a Substantial Completion unless Service Provider can reasonably demonstrate, pursuant to Section 34.2, that it is entitled to a Delay Event in subsequent phases.

35. COMPENSATION EVENTS

35.1 Definition

- (a) For the purposes of this Services Agreement, “**Compensation Event**” means any event referred to in Section 34.1(a)(ii), 34.1(a)(iii), 34.1(a)(iv), and 34.1(a)(v) as a direct result of which Service Provider has incurred loss or expense, whether or not any of these events has also caused a delay.

35.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Service Provider’s sole right to compensation shall be as set out in this Section 35. For greater certainty, except as aforesaid, no other Delay Event shall entitle Service Provider to receive any compensation, except as otherwise provided in:
 - (i) Schedule 15 - Variation Procedure, in the case of a Delay Event referred to in Section 34.1(a)(i);
 - (ii) Section 38, in the case of a Delay Event referred to in Section 34.1(a)(vii); and
 - (iii) Section 32, in the case of a Delay Event referred to in Section 34.1(a)(ix).
- (b) Subject to Sections 35.3 and 35.4, if it is agreed, or determined in accordance with Schedule 20 - Dispute Resolution Procedure, that there has been a Compensation Event, Service Provider shall be entitled to such compensation as would place Service Provider in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Owner to Service Provider. Service Provider shall promptly provide the Owner Representative with any information the Owner Representative may require in order to determine the amount of such compensation.
- (c) If Owner is required to compensate Service Provider pursuant to this Section 35.2, then Owner may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Service Provider, acting reasonably, or, alternatively,

Owner may request Service Provider to agree to an adjustment to the Monthly Service Payments. If Service Provider agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 15 - Variation Procedure shall apply.

35.3 Mitigation

- (a) If Service Provider is (or claims to be) affected by a Compensation Event, Service Provider shall, and shall require all Service Provider Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 35 in relation to any Compensation Event.
- (b) To the extent that Service Provider does not comply with its obligations under this Section 35.3, such failure shall be taken into account in determining Service Provider's entitlement to relief pursuant to this Section 35.

35.4 Insured Exposure

- (a) The compensation payable to Service Provider pursuant to this Section 35 shall be reduced by any amount which Service Provider or a Service Provider Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Services Agreement in respect of insurance or the terms of any policy of insurance required under this Services Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

36. EXCUSING CAUSES

36.1 Definition

- (a) For the purposes of this Services Agreement, "**Excusing Cause**" means any of the following events or circumstances if it occurs after the Phase 1 Substantial Completion Date, Phase 2a Substantial Completion Date, or Phase 2b Substantial Completion Date, as applicable, and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Service Provider Services:
 - (i) the implementation of a Variation to the extent Service Provider has identified any impact on the Service Provider Services in its Estimate and such impact has been documented in the Variation Confirmation;
 - (ii) any breach by Owner of any of Owner's obligations under this Services Agreement (including any obstruction of the rights afforded to Service Provider under Section 11.1), except to the extent that any such breach is caused, or contributed to, by Service Provider or any Service Provider Party;
 - (iii) any deliberate or negligent act or omission of Owner, any Owner Party or any other Government Entity or any failure by Owner or any Owner Party (having regard to the interactive nature of the activities of Owner and Service Provider) to take commercially reasonable steps to perform its activities and to cause other

Government Entities to perform their activities in a manner which minimizes undue interference with Service Provider's performance of the Service Provider Services, except to the extent:

- (A) any such act, omission or failure is caused, or contributed to, by Service Provider or any Service Provider Party;
 - (B) Owner, the Owner Party or other Government Entity is acting in accordance with a written recommendation or written instruction of Service Provider or any Service Provider Party;
 - (C) any such act, omission or failure was contemplated in Schedule 28 - Output Specifications or was otherwise provided for in this Services Agreement; or
 - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Service Provider's obligations under this Services Agreement;
- (iv) the implementation of any action taken by Owner, or any suspension of Service Provider's obligation to deliver all or any part of the Service Provider Services, or the compliance by Service Provider with written instructions given by Owner, in each case in the circumstances referred to in Section 27;
 - (v) the performance of any Small Works in accordance with the terms of this Services Agreement during the period of time agreed between Owner and Service Provider;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of Owner or any Owner Party or other Government Entity except to the extent that any such action is caused, or contributed to, by Service Provider or a Service Provider Party or the consequences of any such action would have been prevented by the proper performance of Service Provider's obligations under this Services Agreement;
 - (vii) the performance of any Preventive Maintenance in accordance with the Preventive Maintenance Plan and any acceleration of Preventive Maintenance, pursuant to Section 23.3, provided that:
 - (A) improperly performed Preventive Maintenance and the effects thereof shall not constitute an Excusing Cause; and
 - (B) where the Preventive Maintenance continues beyond the period set out in the Preventive Maintenance Plan, as applicable, or beyond the period required for accelerated performance pursuant to Section 23.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 36.1(a)(vii)), Service Failure Points may accrue from the time the Preventive Maintenance was due to have been completed in

accordance with the Preventive Maintenance Plan, or Section 23.3, as applicable; or

- (viii) the occurrence of any Contamination for which Owner is responsible pursuant to Section 13.1.

36.2 Consequences of an Excusing Cause

- (a) Provided that the effect of an Excusing Cause is claimed by Service Provider, in writing, within ten Business Days of the date on which Service Provider became aware of the occurrence of such Excusing Cause, then (subject to Sections 36.3 and 36.4):
 - (i) any failure by Service Provider to perform, and any poor performance of, any affected Service Provider Services shall not constitute a breach of this Services Agreement by Service Provider, no Service Failure Points shall accrue in respect of such failure and Service Provider shall be relieved of its obligations to perform such Service Provider Services for the duration (along with, in respect of an Excusing Cause contemplated by Sections 36.1(a)(ii), 36.1(a)(iii) or 36.1(a)(vi) only, such extension of time equal to the duration of such Excusing Cause as may be reasonably required for Service Provider to again perform its obligation in accordance with this Service Agreement) and to the extent prevented by such Excusing Cause;
 - (ii) any interference shall be taken into account in measuring the performance of any affected Service Provider Services;
 - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Service Failure resulting from such interference had not occurred, so that Service Provider shall be entitled to payment under this Services Agreement as if there had been no such interference with the Service Provider Services, provided, however, that Service Provider shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Services Agreement, if this Services Agreement is terminated as provided herein;
 - (iv) this Section 36.2 shall not limit Owner's entitlement to reimbursement pursuant to Section 27.4;
 - (v) Owner shall reimburse Service Provider for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Service Provider as a result of any Excusing Cause referred to in Section 36.1(a)(ii), 36.1(a)(iii), 36.1(a)(vi), or 36.1(a)(viii), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 15 - Variation Procedure; and
 - (vi) the Monthly Service Payments payable by Owner shall be reduced by any savings in Direct Costs arising from Service Provider being relieved of its obligations to

perform the Service Provider Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 15 - Variation Procedure.

36.3 Mitigation

- (a) If Service Provider is (or claims to be) affected by an Excusing Cause, Service Provider shall, and shall require all Service Provider Parties to, take and continue to take commercially reasonable steps, so long as it does not result in any incremental increase in cost to Service Provider or any Service Provider Party:
 - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Services Agreement;
 - (ii) to continue to perform its obligations under this Services Agreement to the extent possible notwithstanding the Excusing Cause; and
 - (iii) to resume performance of its obligations under this Services Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Service Provider does not comply with its obligations under this Section 36.3, such failure shall be taken into account in determining Service Provider's entitlement to relief pursuant to this Section 36.

36.4 Insured Exposure

- (a) The compensation payable to Service Provider pursuant to this Section 36 shall be reduced by any amount which Service Provider or a Service Provider Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Services Agreement in respect of insurance or the terms of any policy of insurance required under this Services Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

37. RELIEF EVENTS

37.1 Definition

- (a) For the purposes of this Services Agreement and in respect of the period commencing on the Effective Date and ending on the day before the
 - (i) Phase 1 Substantial Completion Date (with respect to those Services required to be completed prior to the Phase 1 Substantial Completion)
 - (ii) Phase 2a Substantial Completion Date (with respect to those Services required to be completed prior to the Phase 2a Substantial Completion)

- (iii) Phase 2b Substantial Completion Date (with respect to those Services required to be completed prior to the Phase 2b Substantial Completion)

only, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Services Agreement:

- (iv) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, or earthquake;
- (v) failure by any Utility Company, local authority or other like body to perform works or provide services;
- (vi) accidental loss or damage to the Works and/or the Toll System Field Equipment or any roads servicing the Site;
- (vii) without prejudice to any obligation of Service Provider to provide stand by power facilities in accordance with this Services Agreement, failure or shortage of power, fuel or transport;
- (viii) blockade or embargo falling short of Force Majeure;
- (ix) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (x) any riot, civil commotion, civil disobedience or protest action, including any action taken by any Person or Persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of tolled highways in general;

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Service Provider claiming relief, as a result of any act or omission of any Service Provider Party and (ii) in the case of Owner claiming relief, as a result of any act or omission of any Owner Party or other Government Entity.

- (b) For the purposes of this Services Agreement and in respect of the Operational Term only, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Services Agreement:
 - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, terrorism or earthquake;
 - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;

- (iii) accidental loss or damage to the Toll System Field Equipment or any roads servicing the Site;
- (iv) without prejudice to any obligation of Service Provider to provide stand by power facilities in accordance with this Services Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the tolling industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any riot, civil commotion, civil disobedience or protest action, including any action taken by any Person or Persons protesting or demonstrating against the carrying out of any part of the Project Operations or the maintenance and/or operation of tolled highways in general;

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Service Provider claiming relief, as a result of any act or omission of any Service Provider Party and (ii) in the case of Owner claiming relief, as a result of any act or omission of any Owner Party or other Government Entity.

37.2 Consequences of a Relief Event

- (a) Subject to Section 37.3:
 - (i) no right of termination, other than a Party's right to terminate this Services Agreement pursuant to Section 41.1(a), shall arise under this Services Agreement by reason of any Relief Event; and
 - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Service Failure Points accrued in respect of any failure by Service Provider to perform any of its obligations under this Services Agreement as a result of such Relief Event shall be cancelled and any related Warning Notices and Monitoring Notices issued in respect of such failure shall be withdrawn,

only to the extent that such failure to perform is caused by the occurrence of a Relief Event referred to in Sections 37.1(a), 37.1(b)(i), 37.1(b)(iii), or 37.1(b)(v) (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Services Agreement, including a Party's right to terminate this Services Agreement by reason of a failure by a Party to perform any of its obligations under this Services Agreement which is caused by the occurrence of a Relief Event referred to in Sections 37.1(b)(ii), 37.1(b)(iv), 37.1(b)(vi) and 37.1(b)(vii), remain unaffected by the occurrence of a Relief Event). For greater certainty, Service Failure Points which accrue in respect of a failure by Service Provider to perform any of its obligations under this Services Agreement as a result of the occurrence of a Relief Event referred to in

Sections 37.1(b)(ii), 37.1(b)(iv), 37.1(b)(vi) and 37.1(b)(vii) shall not be cancelled and related Warning Notices and Monitoring Notices issued in respect of such failure shall not be withdrawn when the events or circumstances constituting such Relief Events have ceased. In addition, and for greater certainty, Owner shall be entitled to make Deductions in accordance with Schedule 14 - Payment Mechanism notwithstanding the cancellation of Service Failure Points pursuant to Section 37.2(a)(ii).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 34.1(a)(viii), Service Provider shall only be relieved of its obligations under this Services Agreement to the extent, if any, provided for in Section 34.
- (c) If a Relief Event occurs prior to the
 - (i) Phase 1 Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 1 Substantial Completion),
 - (ii) Phase 2a Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2a Substantial Completion), or
 - (iii) Phase 2b Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2b Substantial Completion),

Service Provider shall not be entitled to receive any compensation other than as expressly provided in Section 43.

- (d) During a Relief Event which occurs on or after the
 - (i) Phase 1 Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 1 Substantial Completion),
 - (ii) Phase 2a Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2a Substantial Completion), or
 - (iii) Phase 2b Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2b Substantial Completion),

the provisions of Schedule 14 - Payment Mechanism will continue to be in full force and effect; provided, however, that despite any Relief Event: (i) where Service Provider collects cash in respect of Toll Revenues, User Fee Revenues (Highway 407 East) and/or interest thereon, it shall promptly remit such amounts to Owner as provided in this Services Agreement and (ii) where Service Provider collects cash in respect of Toll Revenues, User Fee Revenues (Highway 407 East) and/or interest thereon, but is prevented from remitting such amounts to Owner during such Relief Event, such amounts will accrue interest at the Default Interest Rate for the period, if any, while such amounts were under Service Provider's care and control and such accrued interest, along with such cash in respect of Toll Revenues, User Fee Revenues (Highway 407 East) and/or interest thereon, shall be paid to Owner forthwith upon expiry of the Relief Event.

- (e) For greater certainty, other than as expressly provided in Section 43, Service Provider shall not be entitled to receive any compensation in relation to the occurrence of a Relief Event.

37.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall mitigate the consequences of the Relief Event on the performance of its obligations under this Services Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 37.3, such Party shall not be entitled to relief pursuant to this Section 37.
- (c) The Party claiming relief shall give written notice to the other Party within five Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 37.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 37.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

37.4 Insured Exposure

- (a) The compensation payable to Service Provider pursuant to this Section 37 shall be reduced by any amount which Service Provider or a Service Provider Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Services Agreement in respect of insurance or the terms of any policy of insurance required under this Services Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

38. FORCE MAJEURE

38.1 Definition

- (a) For the purposes of this Services Agreement, “**Force Majeure**” means any of the following events or circumstances which, except as otherwise provided in Section 38.1(a)(iv), directly causes either Party to be unable to perform all or a material part of its obligations under this Services Agreement:
- (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
 - (ii) nuclear or radioactive contamination of the Works, the Toll System, the Toll System Field Equipment and/or the Site, unless Service Provider or any Service Provider Party is the source or cause of the contamination;
 - (iii) chemical or biological contamination of the Works, the Toll System, the Toll System Field Equipment and/or the Site from any event referred to in Section 38.1(a)(i); or
 - (iv) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

38.2 Consequences of Force Majeure

- (a) Subject to Section 38.3, the Party claiming relief shall be relieved from liability under this Services Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Services Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 34.1(a)(vii), Service Provider shall only be relieved of its obligations under this Services Agreement to the extent, if any, provided for in Section 34.
- (c) If an event of Force Majeure occurs prior to the
- (i) Phase 1 Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 1 Substantial Completion),
 - (ii) Phase 2a Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2a Substantial Completion), or
 - (iii) Phase 2b Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2b Substantial Completion),

Service Provider shall not be entitled to receive any compensation other than as expressly provided in Section 43.

- (d) During an event of Force Majeure which occurs on or after the

- (i) Phase 1 Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 1 Substantial Completion),
- (ii) Phase 2a Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2a Substantial Completion), or
- (iii) Phase 2b Substantial Completion Date (with respect to those Project Operations required to be completed prior to the Phase 2b Substantial Completion),

the provisions of Schedule 14 - Payment Mechanism will be suspended, and Owner shall pay to Service Provider, for each Payment Period, an amount which reflects the cost to Service Provider of the Service Provider Services provided to Owner during such event of Force Majeure, if any, and the portion of the Toll System that is available for use by Owner during such event of Force Majeure, if any, provided that, during such Payment Period, the amount paid to Service Provider pursuant to this Section 38.2(d) shall never be more than the Monthly Service Payment (calculated as if the Payment Mechanism had not been suspended but no Deductions were applicable).

- (e) Subject to Section 43, Service Provider's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 38.

38.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Services Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 38.
- (c) The Party claiming relief shall give written notice to the other Party within five Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further five Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 38.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.

- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 38.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

38.4 Insured Exposure

- (a) The compensation payable to Service Provider pursuant to this Section 38 shall be reduced by any amount which Service Provider or a Service Provider Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Services Agreement in respect of insurance or the terms of any policy of insurance required under this Services Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

38.5 Modifications

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Services Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 20 - Dispute Resolution Procedure shall not apply to a failure of Owner and Service Provider to reach agreement pursuant to this Section 38.5.

39. SERVICE PROVIDER DEFAULT

39.1 Service Provider Events of Default

[Redacted]

39.2 Notification of Occurrence

- (a) Service Provider shall, promptly upon Service Provider becoming aware of the occurrence, notify Owner of the occurrence, and details, of any Service Provider Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Service Provider Event of Default.

39.3 Right to Termination

- (a) On the occurrence of a Service Provider Event of Default, or at any time after Owner becomes aware of a Service Provider Event of Default, and, if the occurrence of a Service Provider Event of Default is disputed by Service Provider in good faith, then following confirmation in accordance with Schedule 20 - Dispute Resolution Procedure that a Service Provider Event of Default has occurred, Owner may, subject to Section 39.4,

terminate this Services Agreement in its entirety by written notice having immediate effect, such notice to be given to Service Provider.

39.4 Remedy Provisions

- (a) In the case of a Service Provider Event of Default referred to in Sections **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** (where the Service Provider Event of Default referred to in Section **Error! Reference source not found.** is analogous to a Service Provider Event of Default referred to in Section **Error! Reference source not found.** or **Error! Reference source not found.**), **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.** (where the Service Provider Event of Default referred to in **Error! Reference source not found.** is capable of being remedied), **Error! Reference source not found.**, **Error! Reference source not found.** (where the Service Provider Event of Default referred to in Section **Error! Reference source not found.** is not in respect of insurance), **Error! Reference source not found.**, **Error! Reference source not found.**, **Error! Reference source not found.**, or **Error! Reference source not found.** (where the Service Provider Event of Default referred to in Section **Error! Reference source not found.** is capable of being remedied) Owner shall, prior to being entitled to terminate this Services Agreement, give notice of default to Service Provider, and Service Provider shall:
- (i) within **[Redacted]** Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Service Provider Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Service Provider Event of Default is proposed to be remedied, which latest date shall, in any event, be within **[Redacted]** days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Owner, acting reasonably; and
 - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Service Provider puts forward a plan and schedule in accordance with Section 39.4(a)(i) that has a date for the Event of Default to be remedied that is beyond **[Redacted]** days from the notice of default, Owner shall have **[Redacted]** Business Days from receipt of the same within which to notify Service Provider that Owner does not accept such longer period in the plan and schedule and that the **[Redacted]** day limit will apply, failing which Owner shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Service Provider Event of Default, of which a notice of default was given under Section 39.4(a), occurs and:

- (i) Service Provider fails to immediately commence and thereafter diligently continue to remedy the Service Provider Event of Default and to mitigate any adverse effects on Owner and the performance of the Service Provider Services; or
- (ii) Service Provider fails to put forward a plan and schedule pursuant to Section 39.4(a)(i); or
- (iii) such Service Provider Event of Default is not remedied within **[Redacted]** days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 39.4(a)(i) and 39.4(b); or
- (iv) where Service Provider puts forward a plan and schedule pursuant to Section 39.4(a)(i) and Service Provider fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then Owner may terminate this Services Agreement in its entirety by written notice with immediate effect, such notice to be given to Service Provider.

- (d) Notwithstanding that Owner may give the notice referred to in Section 39.4(a), and without prejudice to the other rights of Owner in this Section 39.4, at any time during which a Service Provider Event of Default is continuing, Owner may, at Service Provider's risk and expense, take such steps as Owner considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Service Provider's obligations under this Services Agreement or to remedy such Service Provider Event of Default.
- (e) Upon the occurrence of a Service Provider Event of Default that Service Provider has remedied pursuant to this Section 39.4, such occurrence of a Service Provider Event of Default shall thereafter cease to be a Service Provider Event of Default and Owner shall not be entitled to terminate this Services Agreement for that occurrence of a Service Provider Event of Default.

39.5 Owner's Costs

- (a) Service Provider shall reimburse Owner for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Owner in exercising its rights under this Section 39, including any relevant increased administrative expenses. Owner shall take commercially reasonable steps to mitigate such costs.

39.6 No Other Rights to Terminate

- (a) Owner shall have no right or entitlement to terminate this Services Agreement, or to accept any repudiation of this Services Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 39 and 41.

40. OWNER DEFAULT

40.1 Owner Events of Default

- (a) For the purposes of this Services Agreement, “**Owner Event of Default**” means any one or more of the following events or circumstances:
- (i) Owner failing to pay any sum or sums due to Service Provider under this Services Agreement, which sum or sums are not being disputed by Owner in accordance with Schedule 20 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[Redacted] (index linked), and:
 - (A) subject to Section 40.1(a)(i)(B), in respect of any Monthly Service Payment, such failure continues for 30 days;
 - (B) in respect of any [Redacted] Monthly Service Payments in any rolling nine-month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment;
 - (C) in respect of any other payment due and payable by Owner to Service Provider under this Services Agreement, such failure continues for 90 days, or
 - (D) in respect of the Phase 1 Substantial Completion Payment or Phase 2b Substantial Completion Payment each such failure continues for ten Business Days;

in any such case, from receipt by Owner of a notice of non-payment from or on behalf of Service Provider;

- (ii) Owner committing a material breach of its obligations under Section 11 (other than as a consequence of a breach by Service Provider of its obligations under this Services Agreement), which breach materially adversely affects the ability of Service Provider to perform its obligations under this Services Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Service Provider to perform all or substantially all of its obligations under this Services Agreement (other than as a consequence of a breach by Service Provider of its obligations under this Services Agreement, except to the extent that such breach by Service Provider was caused by an act of any Governmental Authority where such act adversely affects Service Provider in a disproportionate manner as compared to other Persons subject to such act) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Service Provider Permits, Licences and Approvals in compliance with Applicable Law shall not constitute an “act of Governmental Authority”, except to the extent that any Applicable Law was modified by any Governmental Authority in a manner which allowed them to not

issue or impose conditions or limitations in any of the Service Provider Permits, Licences and Approvals and where such modification adversely affects Service Provider in a disproportionate manner as compared to other Persons subject to such act.

40.2 Service Provider's Options

- (a) On the occurrence of an Owner Event of Default and while the same is continuing, Service Provider may give notice to Owner of the occurrence of such Owner Event of Default, which notice will specify the details thereof, and, at Service Provider's option and without prejudice to its other rights and remedies under this Services Agreement, may:
 - (i) suspend performance of the Works and Service Provider Services until such time as Owner has remedied such Owner Event of Default; or
 - (ii) if such Owner Event of Default has not been remedied within 30 days, or in respect of a default under Section 40.1(a)(i)(D), within ten Business Days, of receipt by Owner of notice of the occurrence of such Owner Event of Default, terminate this Services Agreement in its entirety by notice in writing having immediate effect.

40.3 Service Provider's Costs

- (a) Owner shall reimburse Service Provider for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Service Provider in exercising its rights under this Section 40, including any relevant increased administrative expenses. Service Provider shall take commercially reasonable steps to mitigate such costs.

40.4 No Other Rights to Terminate

- (a) Service Provider shall have no right or entitlement to terminate this Services Agreement, nor to accept any repudiation of this Services Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Services Agreement.

41. NON-DEFAULT TERMINATION

41.1 Termination for Relief Event

- (a) Subject to Section 41.1(b), if a Relief Event occurs which directly causes either Party to be unable to perform all or a material part of its obligations under this Services Agreement for a continuous period of 180 days, either Party may, at any time thereafter, terminate this Services Agreement by written notice to the other Party having immediate effect, provided always that the effects of such Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Services Agreement.

- (b) Neither Party shall be entitled to exercise its right to terminate this Services Agreement in accordance with Section 41.1(a) if Service Provider or a Service Provider Party recovers or is entitled to recover, under any insurance policy, or would have been entitled to recover if it had complied with the requirements of this Services Agreement in respect of insurance or the terms of any policy of insurance required under this Services Agreement, an amount that would substantially mitigate the consequences of the Relief Event.

41.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Services Agreement pursuant to Section 38.5 within **[Redacted]** from the date on which the Party affected gives notice to the other Party as set out therein, either Party may at any time thereafter terminate this Services Agreement by written notice to the other Party having immediate effect provided always that the effects of the relevant event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Services Agreement.

41.3 Termination for Convenience

- (a) Owner shall, in its Sole Discretion and for any reason whatsoever, be entitled to terminate this Services Agreement at any time on 180 days written notice to Service Provider.
- (b) In the event of notice being given by Owner in accordance with this Section 41.3, Owner shall, at any time before the expiration of such notice, be entitled to direct Service Provider to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Service Provider Services, or any element of the Service Provider Services, where such Works or Service Provider Services have not yet been commenced.

41.4 Automatic Expiry on Expiry Date

- (a) This Services Agreement shall terminate automatically on the Expiry Date.
- (b) Service Provider shall not be entitled to any compensation due to termination of this Services Agreement on expiry of the Project Term on the Expiry Date.

42. EFFECT OF TERMINATION

42.1 Termination

- (a) Notwithstanding any provision of this Services Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 41.4, this Section 42 shall apply in respect of such termination.

42.2 Continued Effect - No Waiver

- (a) Notwithstanding any breach of this Services Agreement by a Party, the other Party may elect to continue to treat this Services Agreement as being in full force and effect and to enforce its rights under this Services Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Services Agreement, including any right to terminate this Services Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

42.3 Continuing Performance

- (a) Subject to any exercise by Owner of its rights to perform, or to seek, pursuant to this Services Agreement, a third party to perform, the obligations of Service Provider, the Parties shall continue to perform their obligations under this Services Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of this Services Agreement becomes effective in accordance with this Section 42.

42.4 Effect of Notice of Termination

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 41.4:
 - (i) if termination is prior to the Phase 2b Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Owner as shall not already have been transferred to Owner pursuant to Section 48.1, Service Provider shall transfer to, and there shall vest in, Owner, free from all Encumbrances other than the Title Encumbrances and any Encumbrances derived through Owner, such part of the Toll System Field Equipment as shall have been constructed and such items of the materials and equipment as shall have been procured by Service Provider, and, if Owner so elects:
 - (A) all equipment and materials in respect of the Toll System Field Equipment (other than those referred to in Section 42.4(a)(i)(B)) on or near to the Site shall remain available to Owner for the purposes of completing the Works; and
 - (B) all construction materials and equipment in respect of the Toll System Field Equipment shall remain available to Owner for the purposes of completing the Works, subject to payment by Owner of the Subcontractor's reasonable charges;
 - (ii) in so far as title shall not have already passed to Owner pursuant to Section 48.1 or Section 42.4(a)(i) to the extent and in the manner contemplated in Schedule 22 – Termination/Expiry Services, Service Provider shall hand over to, and there shall vest in, Owner, free from all Encumbrances other than the Title

Encumbrances and any Encumbrances derived through Owner, the Toll System Field Equipment together with all other assets and rights (other than those comprising the 407ETR Tolling System) capable of being transferred by Service Provider that are necessary for the operation of and directly related to the Toll System Field Equipment, and to the extent that any such assets or rights are not capable of being transferred by Service Provider to Owner, Service Provider shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Owner in order to enable it, or its designated agents or subcontractors, to continue to operate the Toll System Field Equipment;

- (iii) in the case of the termination of this Services Agreement on the Expiry Date in accordance with Section 41.4, the Toll System Field Equipment and elements of the Toll System Field Equipment shall be in the condition required in accordance with Section 42;
- (iv) if Owner so elects, Service Provider shall ensure that any of the Subcontracts entered into after the Effective Date between Service Provider and a Service Provider Party, any other instrument entered into between any such Service Provider Party and Service Provider for securing the performance by such Service Provider Party of its obligations in respect of the Toll System Field Equipment or to protect the interests of Service Provider, shall be novated or assigned to Owner or its nominee, provided that where termination occurs other than as a result of a Service Provider Event of Default, the consent of the relevant Service Provider Party shall be required;
- (v) Service Provider shall, or shall ensure that any Service Provider Party shall, offer to sell (and if Owner so elects, execute such sale) to Owner at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 20 - Dispute Resolution Procedure), free from any Encumbrance (other than the Title Encumbrances and any Encumbrances derived through Owner), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Service Provider or any Service Provider Parties and dedicated to or predominantly used in respect of the Toll System Field Equipment, and reasonably required by Owner in connection with the operation of the Toll System Field Equipment or the provision of the Service Provider Services;
- (vi) Service Provider shall deliver to Owner (as far as not already delivered to Owner) one complete set of:
 - (A) the most recent As Built Drawings in the format that Owner, acting reasonably, considers most appropriate at the time showing all alterations made to the Toll System Field Equipment since the Phase 1 Substantial Completion Date, the Phase 2a Substantial Completion Date, or the Phase 2b Substantial Completion Date, whichever having occurred last prior to such date of termination or notice of termination; and

- (B) the most recent maintenance, operation and training manuals for the Toll System Field Equipment.

- (vii) Service Provider shall use commercially reasonable efforts to assign, or otherwise transfer, to Owner, free of Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Owner), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of Toll System Field Equipment;

- (viii) Service Provider shall deliver to Owner all information, reports, documents, records and the like referred to in Section 31, including as referred to in Schedule 19 - Record Provisions, except where such are required by Applicable Law to be retained by Service Provider or the Service Provider Parties (in which case complete copies shall be delivered to Owner); and

- (ix) if termination is prior to the Phase 2b Substantial Completion Date, to the extent not already required by the foregoing provisions of this Section 42.4, Service Provider shall deliver to Owner (as far as not already delivered to Owner) one complete set of all Project Data relating to the design, construction and completion of the Toll System Field Equipment in existence and available to Service Provider on the date of termination.

42.5 Ownership of Information

- (a) Subject to Section 44, all information obtained by Service Provider, including the Project Data, As Built Drawings and other technical drawings and data, utilities consumption information, environmental and technical reports, static building information, lease, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Toll System Field Equipment and the part (a) definition of Project Data related to the Project accumulated over the course of the Project Term shall be the property of Owner and upon termination of this Services Agreement shall be provided or returned to Owner, as applicable, in electronic format acceptable to Owner, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

42.6 Provision in Subcontracts

- (a) Service Provider shall make provision in all Subcontracts entered into after the Effective Date to which it is a party (including requiring the relevant Service Provider Party to make such provision and to require other Service Provider Parties to make such provision) to ensure that Owner shall be in a position to exercise its rights, and Service Provider shall be in a position to perform its obligations, under this Section 42.

42.7 Transitional Arrangements

- (a) On the termination or expiration of this Services Agreement for any reason, for a reasonable period both before and after any such termination or expiration, Service Provider shall, in addition to the continued provision of Service Provider Services:

- (i) cooperate fully with Owner and any successors (provided such successor enters into obligation of confidentiality with Service Provider on terms acceptable to Service Provider, acting reasonably) providing to Owner services in the nature of any of the Service Provider Services or any part of the Service Provider Services in order to achieve, in so far as reasonably practicable, a smooth transfer of the manner in which Owner obtains services in the nature of the Service Provider Services and to avoid or mitigate, in so far as reasonably practicable, any lost revenues to the Owner or any inconvenience or any risk to the health and safety of the users of Highway 407 East, including employees and visitors to the Site;
 - (ii) provide the services set out in Schedule 22 – Termination/Expiry Services;
 - (iii) upon notice from Owner, as soon as practicable remove from the Site all property belonging to Service Provider or any Service Provider Party that is not acquired by Owner pursuant to Section 42.4 or otherwise, and, if Service Provider has not done so within 60 days after any notice from Owner requiring it to do so, Owner may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Service Provider;
 - (iv) upon notice from Owner forthwith deliver to the Owner Representative:
 - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Toll System Field Equipment; and
 - (B) to the extent transferable by Service Provider and without prejudice to Owner's rights pursuant to Section 44, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Toll System Field Equipment in the manner and to the extent contemplated in Schedule 22 – Termination/Expiry Services;
 - (v) upon notice from Owner as soon as practicable vacate the Site and, without limiting Service Provider's obligations under Schedule 22 – Termination/Expiry Services, shall leave the Site and the Toll System Field Equipment in a safe, clean and orderly condition; and
 - (vi) upon notice from Owner as soon as practicable cease charging all Highway 407 East users with respect to travel on Highway 407 East.
- (b) If Owner wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Service Provider Services or any of them, following the expiry of this Services Agreement, Service Provider shall, subject to payment of Service Provider's reasonable costs, cooperate with Owner fully in such competition process, including by:

- (i) providing any information which Owner may reasonably require to conduct such competition, other information related to the operation of any part of the 407ETR than Sensitive Information; and
- (ii) assisting Owner by allowing any or all participants in such competition process unrestricted access to the Site and the Toll System Field Equipment.

42.8 Termination upon Aforesaid Transfer

- (a) On completion of Service Provider's obligations pursuant to this Section 42, this Services Agreement shall terminate and, except as provided in Section 42.9, all rights and obligations of Owner and Service Provider under this Services Agreement shall cease and be of no further force and effect.

42.9 Survival

- (a) Except as otherwise provided in this Services Agreement, termination or expiration of this Services Agreement shall be without prejudice to, and shall not affect:
 - (i) all representations, warranties and indemnities under this Services Agreement; and
 - (ii) Sections 1.1(d), 1.2, 5, 6, 12.2, 13.2(a), 19.6, 20.9, 23.7, 26.4, 27, 29.5, 29.7, 29.12, 29.13, 29.14, 30, 31, 39.5, 40.3, 41.4, 42, 43, 44, 45, 46, 48, 49, 50, 51, 53.2, 53.3, 54.1, 55.4, 55.6, 55.8, 55.9, 55.10, 55.11, 55.12, 55.17 and 55.18 of this Services Agreement, Schedule 16 - Compensation on Termination, Schedule 22 – Termination/Expiry Services, Sections 1.2 to 1.8 of Schedule 19 - Record Provisions, Schedule 20 - Dispute Resolution Procedure and any other provisions of this Services Agreement which are expressed to survive termination or expiration or which are required to give effect to such provisions which survive termination or expiration or to such termination or expiration or the consequences of such termination or expiration,

all of which shall survive the termination or expiration of this Services Agreement, including for termination on the Expiry Date pursuant to Section 41.4.

43. COMPENSATION ON TERMINATION

43.1 Compensation on Termination

- (a) If this Services Agreement is terminated in accordance with the terms hereof, then Schedule 16 - Compensation on Termination shall apply and the applicable Party therein shall pay to the other Party any applicable compensation on termination.

43.2 Rights of Set-Off

- (a) For greater certainty, Owner shall be entitled to exercise its rights of set-off under Section 29.12 against any payment of compensation to Service Provider pursuant to this Section 43, including pursuant to Schedule 16 - Compensation on Termination.

43.3 Full and Final Settlement

- (a) Except as otherwise provided in Section 43.3(b), any compensation paid pursuant to this Section 43, including pursuant to Schedule 16 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Service Provider and Owner, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Services Agreement, and the circumstances leading to such breach or termination, and Service Provider and Owner shall be excluded from all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 43.3(a) shall be without prejudice to:
 - (i) any liability of either Party to the other, including under the indemnities contained in this Services Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set-off pursuant to Section 29.12 or Section 43.2 or taken into account pursuant to Schedule 16 - Compensation on Termination in determining or agreeing upon the Owner Default Termination Sum, Owner Termination Fee, Force Majeure Termination Sum, Service Provider Relief Event Termination Sum or any other termination sum, as the case may be;
 - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 42.9 of this Services Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date; and
 - (iii) any liability or obligation of Service Provider to remit all Toll Revenues, User Fee Revenues (Highway 407 East) and interest thereon to Owner whether received prior to or after termination of this Services Agreement or any liability or obligation of Owner in respect of Monthly Service Payments.

44. INTELLECTUAL PROPERTY

44.1 Representation and Warranty

- (a) Service Provider represents and warrants to Owner and agrees that:
 - (i) Service Provider is and shall be the sole and exclusive owner or authorized licensee of the Existing Service Provider IP used in the Project Operations or has and shall have or shall obtain prior to the Phase 1 Substantial Completion Date,

Phase 2a Substantial Completion Date, or Phase 2b Substantial Completion Date, as applicable, (for greater certainty the failure to provide such licences to Owner following the Effective Date will not relieve Service Provider of its obligation to provide the applicable Service Provider Services immediately upon the Phase 1 Substantial Completion Date, the Phase 2a Substantial Completion Date or the Phase 2b Substantial Completion Date) the right to provide the licences granted to Owner herein; and

- (ii) the Existing Service Provider IP used in the Project Operations, the Project Data (excluding Owner Party Design Data) and the Intellectual Property Rights do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property, and as of the Effective Date Service Provider has not received any alleged infringement or misappropriation notices from third parties regarding such Existing Service Provider IP, the Project Data or the Intellectual Property Rights.

44.2 Delivery of Intellectual Property Rights

- (a) Service Provider shall make all Existing Service Provider IP licensed to Owner pursuant to Section 44.3 available to, and upon request shall deliver to, Owner free of charge such Existing Service Provider IP, and shall obtain all necessary licences, permissions and consents to ensure that Service Provider shall make such Existing Service Provider IP available to and deliver such Existing Service Provider IP to Owner on the aforesaid terms of this Section 44.2, for purposes of this Services Agreement.

44.3 License of Existing Service Provider IP

- (a) Service Provider hereby grants Owner a perpetual, royalty-free, non-exclusive sublicensable but non-transferable licence, including the right to make derivative works, with a right to grant sub-licences, to use the Existing Service Provider IP (excluding, for greater certainty, Existing Service Provider IP related to the non-field equipment portion of the 407ETR Tolling System) that is owned by Service Provider and that is required to operate or maintain, or otherwise pertaining to the Toll System Field Equipment for any purpose that is used, or intended to be used, in connection with the Project, including for the purposes of:
 - (i) the Works, including the design and construction of the Toll System Field Equipment;
 - (ii) the Service Provider Services, including the operation, maintenance, improvement and testing of the Toll System Field Equipment;
 - (iii) any other Project Operations; or
 - (iv) the Services Agreement.
- (b) In this Section 44, “use” includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise

using such Existing Service Provider IP, the Project Data or the Intellectual Property Rights, as applicable.

- (c) Service Provider shall, at the request of Owner, execute such further agreements, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (d) Notwithstanding any other provision in this Services Agreement, Owner will have no rights to use the de-encryption technology used in the gantries and transponders or the 407ETR Tolling System.

44.4 Project Data and Intellectual Property Rights

- (a) Subject to Sections 44.4 (d) and (e), the Parties hereby acknowledge and agree that Owner shall be the sole and exclusive owner of all right, title and interest in and to the Project Data (other than Project Data that relates also to the 407ETR Tolling System, which shall be jointly owned by Owner and Service Provider, without an obligation to account) and the Intellectual Property Rights and any and all improvements, modifications and enhancements thereto. The Parties will execute such further agreements, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Owner hereby grants Service Provider a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to the Service Provider Parties, to use the Project Data and the Intellectual Property Rights from the date hereof until the expiry of the obligation to provide transition assistance pursuant to Schedule 22 solely for the purposes of Service Provider or any Service Provider Party performing its obligations under this Services Agreement or its Subcontract, as applicable.
- (c) All rights and licences whatsoever granted to Service Provider or to the Service Provider Parties in the Project Data and the Intellectual Property Rights shall automatically terminate upon the expiry of the obligation to provide transition assistance pursuant to Schedule 22, and Service Provider shall, and shall cause the Service Provider Parties to, return any and all Project Data and the Intellectual Property Rights in the custody or possession of Service Provider or any Service Provider Party to Owner.
- (d) The data and information (e.g., name, address, other contact information, preferences) in respect of each customer, on an individual account basis: (i) that has used both 407ETR and Highway 407 East (each, a “**Common Customer**”) will be jointly owned by Owner and Service Provider and, subject to Section 44.4 (e) and the obligation of Service Provider to provide such data and information to Owner upon request and without further cost, without any further obligation to the other party with respect to such information, including, and without limitation, the obligation to account for or obtain consent to use, disclose, license or otherwise lawfully provide such information; (ii) that has used 407ETR but not Highway 407 East shall be the sole and exclusive property of Service Provider, and shall not be considered Project Data; and (iii) that has used Highway 407 East but not 407ETR shall be the sole and exclusive property of Owner, and shall be

considered Project Data. In addition, usage and trip information of Common Customers for trips: (A) that begin on 407ETR and end on Highway 407 East, or vice versa, will be jointly owned by Owner and Service Provider and, subject to Section 44.4 (e) and the obligation of Service Provider to provide such usage and trip information to Owner upon request and without further cost, without any further obligation to the other party with respect to such information, including, and without limitation, the obligation to account for or obtain consent to use, disclose, license or otherwise lawfully provide such information; (B) for trips that begin and end on 407ETR shall be the sole and exclusive property of Service Provider, and shall not be considered Project Data; and (C) for trips that begin and end on Highway 407 East shall be the sole and exclusive property of Owner, and shall be considered Project Data.

- (e) Notwithstanding any provision of this Services Agreement, Service Provider shall not have any greater right to the use of Project Data or information in respect of Common Customers than is granted to 407 ETR Limited pursuant to the CGLA and Applicable Law.
- (f) Notwithstanding any other provision of this Agreement but subject to Section 44.4(e), neither the Owner nor the Service Provider will be restricted in any way from dealing with and shall not be obligated to notify, seek the consent of, account to or otherwise deal with or have any obligation to, the other Party in respect of any jointly owned Project Data, including the use, license, or otherwise lawful provision thereof.

44.5 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Service Provider and Owner pursuant to this Services Agreement or solely in relation to the Toll System Field Equipment, the Site or Project Operations (except to the extent that it related to the 407ETR Tolling System) (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that Owner shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto excluding Existing Service Provider IP. Service Provider shall, at the request of Owner, execute such further agreements, assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Owner hereby grants Service Provider a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to the Service Provider Parties, to use the Jointly Developed Materials from the date hereof until the expiry of the obligation to provide transition assistance pursuant to Schedule 22 for the sole purposes of Service Provider or any Service Provider Party performing its obligations under this Services Agreement or its Subcontract, as applicable.
- (c) Upon termination or expiration of this Services Agreement, all rights and licences whatsoever granted to Service Provider in the Jointly Developed Materials shall automatically terminate upon the expiry of the obligation to provide transition assistance

pursuant to Schedule 22, and Service Provider shall return any and all Jointly Developed Materials in the custody or possession of Service Provider to Owner.

44.6 Restrictions

- (a) The Parties hereby agree that either Party may use the Project Know-How for any purpose, provided, however, (i) that neither Service Provider nor any Service Provider Party shall use the Project Know-How to the extent that such Project Know-How incorporates, references or is otherwise based on the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or the Confidential Information of a Government Entity and (ii) that Owner shall not use the Project Know-How to the extent that it incorporates, references or is otherwise based on Existing Service Provider IP, Intellectual Property of Service Provider or Service Provider Party or Confidential Information of Service Provider or any Service Provider Party.
- (b) Service Provider hereby covenants and agrees that it will not make any commercial use, including, without limitation, use in any other request for proposal or similar procurement process, of the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or the Confidential Information of a Government Entity, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the Project Data, the Intellectual Property Rights, the Jointly Developed Material, the Intellectual Property of a Government Entity or the Confidential Information of a Government Entity.

44.7 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this Section 44 are generated by, or maintained on, a computer or similar system, Service Provider shall procure for the benefit of Owner, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Owner or its nominee to access and otherwise use (as such term is defined in Section 44.3(b)), subject to the payment by Owner of any relevant fee, such data, materials and documents.
- (b) Without limiting the obligations of Service Provider under Section 44.7(a), Service Provider shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 44 in accordance with Good Industry Practice. Service Provider shall submit to the Owner Representative Service Provider's proposals for the back up and storage in safe custody of such data, materials and documents and Owner shall be entitled to object if the same is not in accordance with Good Industry Practice. Service Provider shall comply, and shall cause all Service Provider Parties to comply, with all procedures to which the Owner Representative has not objected. Service Provider may vary its procedures for such back up and storage subject to submitting its proposals for change to the Owner Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this

Section 44.7(b) may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure with reference to Good Industry Practice.

44.8 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against Owner or an Owner Party which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data (other than Owner Party Design Data), Intellectual Property Rights, Existing Service Provider IP or because the use by Service Provider or any Service Provider Party of any software, materials, plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any such Project Data or Intellectual Property Rights by Owner otherwise than in accordance with the terms of this Services Agreement, Service Provider shall indemnify, defend and hold harmless Owner from and against all such demands, claims, actions and proceedings and Section 49.3 shall apply.

- (b) In addition to Section 44.8(a) and Service Provider's indemnity obligations thereunder, Service Provider, at its option and cost, shall:
 - (i) obtain the right to use such Project Data, Intellectual Property Rights or Existing Service Provider IP, or such software, materials, plant, machinery or equipment used by Service Provider or any Service Provider Party in connection with the Project Operations without obligation on the part of Owner or the Owner Parties to the owner of the allegedly infringed Intellectual Property;

 - (ii) modify or replace such Project Data, Intellectual Property Rights or Existing Service Provider IP, or such software, materials, plant, machinery or equipment used by Service Provider or any Service Provider Party in connection with the Project Operations, without materially diminishing or degrading the functionality or performance thereof to become non-infringing at Service Provider's sole expense; or

 - (iii) if neither of the obligations set forth in subsections (b)(i) or (b)(ii) is possible on a commercially reasonable basis, require that Owner and Owner Parties, after being provided with a reasonable period of time to migrate to an alternative solution, discontinue the use of and return the infringing Project Data, Intellectual Property Rights or Existing Service Provider IP, or such software, materials, plant, machinery or equipment used by Service Provider or any Service Provider Party in connection with the Project Operations in return for a payment by Service Provider equal to the full cost of a suitable replacement.

Notwithstanding the foregoing, Service Provider will not have any liability for any third-party claim of infringement to the extent based upon: (i) modifications of the items or materials that were not made or authorized by Service Provider or the applicable Service Provider Party; (ii) the use of an item or materials in connection with another product or service (the combination of which causes the infringement) not contemplated by this

Services Agreement or approved by Service Provider; or (iii) Service Provider's compliance with Owner's express, written specifications.

44.9 Owner Trade-Marks

- (a) Service Provider shall not use any Owner Trade-Marks or any Trade-Marks of any Government Entity without obtaining a trade-mark licence on terms and conditions mutually satisfactory to Owner (or the relevant Government Entity) and Service Provider, each acting reasonably.

44.10 Confidential Information

- (a) It is expressly acknowledged and agreed that nothing in this Section 44 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

44.11 Government Use of Documents

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Services Agreement that might prohibit or otherwise interfere with any Government Entity's ability to use this Services Agreement in any manner desired by any Government Entity. Notwithstanding the foregoing, the Parties agree that Output Specifications shall be the joint property of both Parties and may be used in any way by each Party (including transferring or licensing to third parties) without any obligation to account to the other Party.
- (b) Each of the Parties hereby consents to the use by each Government Entity of this Services Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by Owner (in consultation with Service Provider) of any information supplied in confidence to a Government Entity by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

45. CONFIDENTIALITY

45.1 Disclosure

- (a) Subject to Sections 45.1(a), 45.1(b) and 45.2, but notwithstanding anything else in this Services Agreement to the contrary, Service Provider acknowledges and agrees that, in accordance with the transparency and accountability principles of the Province, Owner has a right to disclose or publish (including on websites) this Services Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Services Agreement, any information related to the performance of Service Provider (or any Service Provider Party) or any information derived from this Services Agreement or the information related to the performance of Service Provider (or any Service Provider Party) as Owner, in its Sole Discretion, may consider appropriate. In exercising its discretion, Owner will be guided by the principles set out in Sections 45.1(a) and 45.1(b).

- (b) Owner will not disclose portions of this Services Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Services Agreement, any information related to the performance of Service Provider (or any Service Provider Party) or any information derived from this Services Agreement or the information related to the performance of Service Provider (or any Service Provider Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 45.1(a), but subject to Section 45.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Service Provider (or any Service Provider Party), Owner may disclose such information.

45.2 Redaction

- (a) Prior to disclosing or publishing this Services Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Services Agreement, any information related to the performance of Service Provider (or any Service Provider Party) or any information derived from this Services Agreement or the information related to the performance of Service Provider (or any Service Provider Party), Owner shall provide to Service Provider a redacted version of this Services Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 45.1(b). The Parties acknowledge and agree that Monthly Service Payments, but not the breakdown thereof, may be disclosed.
- (b) If Service Provider, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 45.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 20 - Dispute Resolution Procedure, and Owner shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

45.3 Disclosure to Government

- (a) Service Provider acknowledges and agrees that Owner will be free to disclose any information, including Confidential Information, to each Government Entity, and, subject to compliance with FIPPA, each Government Entity will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as such Government Entity sees fit.
- (b) For greater certainty, the Parties acknowledge and agree that, subject only to the removal of any information which the Parties are (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Services Agreement, any contractual submissions or other records kept in accordance with this Services Agreement, any information related to the performance of Service Provider (or Service Provider Party) or any information derived from this Services Agreement or the information related to the

performance of Service Provider (or any Service Provider Party) are public documents and information and, as such, may be disclosed by each Government Entity.

45.4 Freedom of Information and Protection of Privacy Act

- (a) The Parties acknowledge and agree that (a) FIPPA applies to each of MEDEI, Owner and MTO; (b) that each of MEDEI, Owner and MTO are required to fully comply with FIPPA; and (c) that each of MEDEI, Owner and MTO is responsible for the disclosure of Records (as such term is defined in FIPPA) that are in their respective custody and control.
- (b) Each of MEDEI, Owner and MTO shall, within the time periods provided in FIPPA for a party to exercise rights to prevent disclosure of information, advise Service Provider of any request for Confidential Information that relates to Service Provider (or any Service Provider Party) or of such of any of MEDEI, Owner and MTO's intention to voluntarily release any information or documents which contain Confidential Information that relates to Service Provider (or any Service Provider Party).

45.5 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any Person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 45 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Services Agreement.
- (b) Except as authorized hereunder, Service Provider shall hold in confidence, not disclose and not permit any Person any manner of access to, whether directly or indirectly, any Confidential Information of any Government Entity, provided that this Section 45 shall not restrict Service Provider from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable Service Provider to perform, to cause to be performed, or to enforce, its rights or obligations under this Services Agreement.
- (c) Service Provider may disclose in confidence to any Service Provider Party and their professional advisors, such Confidential Information as is necessary for the performance by that Service Provider Party of that Service Provider Party's obligations under this Services Agreement. Service Provider may disclose in confidence to 407 International Inc. or its successors and its professional advisors such Confidential Information as is necessary for 407 International Inc. to determine if it is required to make any disclosures required by applicable securities laws; provided, however, that Service Provider causes 407 International Inc. to comply with all of the provisions of this Services Agreement in respect of Confidential Information in favour of Owner.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other Person to use, any Confidential Information of the other Party except for the purposes of this Services Agreement, as permitted by this Services Agreement or as authorized by the disclosing Party in writing.

- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.
- (f) All Project Operations that involve or may involve the use, storage, processing or any other handling of Confidential Information of a Government Entity shall be performed by Service Provider and each Service Provider Party within Canada except to the extent that Service Provider obtains prior approval from Owner, which approval may be withheld in Owner's Sole Discretion. Service Provider may, and each Service Provider Party may, use, store, process or handle other Confidential Information outside Canada only to the extent that use, storage, processing or other handling of other Confidential Information outside Canada is reasonably necessary for the performance of the Project Operations provided that Service Provider gives Owner concurrent notice thereof. Service Provider shall, and shall cause each Service Provider Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Confidential Information of a Government Entity outside of Canada except to the extent that Service Provider obtains prior approval from Owner, which approval may be withheld in Owner's Sole Discretion. Service Provider may, and may permit each Service Provider Party to, store, process, communicate, transfer, access or permit or enable direct or remote access to other Confidential Information outside of Canada only to the extent that storage, processing, communicating, transferring, accessing or permitting or enabling direct or remote access to other Confidential Information outside Canada is reasonably necessary for the performance of the Project Operations provided that Service Provider gives Owner concurrent notice thereof.
- (g) Owner acknowledges that users of Highway 407 East will include Persons (i) who are not resident in Canada, (ii) for whom the licence plate affixed to their vehicle is registered in a jurisdiction outside of Canada, or (iii) who have otherwise directed/consented to Service Provider or a Service Provider Party communicating information about or belonging to such Person to a jurisdiction outside of Canada (collectively, "**Foreign Business Users**"). Owner and Service Provider agree that the restrictions contained in Section 45.5(f) not to store, process, communicate, transfer, access or permit or enable direct or remote access to any Confidential Information of a Government Entity or other Confidential Information outside of Canada (except to the extent Owner provides prior approval), will not apply to information of Foreign Business Users.

45.6 Exceptions

- (a) Information of a Party (the "**Proprietor**"), other than Government Sensitive Information and other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
 - (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;

- (ii) the information is, as of the Effective Date, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
- (iii) the information is a matter of public record or in the public domain;
- (iv) the information was in the possession of the Confidant prior to its disclosure without an obligation of confidentiality;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification to the extent permitted by Applicable Law, and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to Owner upon a termination of this Services Agreement, pursuant to Section 42 or is otherwise required by Owner for the purposes of performing (or having performed) the design or construction of the Toll System Field Equipment, the operation, maintenance or improvement of the Toll System Field Equipment; or
- (ix) the information would not be exempt from disclosure under FIPPA.

45.7 Period of Survival

- (a) The obligations of Owner and, subject to the next following sentence, Service Provider in Section 45.1 to 45.6 will cease on the date that is 3 years after the Termination Date. The obligations of Service Provider in Section 45.1 to 45.6 as they relate to Confidential Information of a Government Entity shall survive indefinitely.

45.8 Communications Protocol

- (a) The parties shall comply with the provisions of Schedule 12 – Communications Protocol.

46. PERSONAL INFORMATION

46.1 General

- (a) Each of the Owner and Service Provider acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.

- (b) Service Provider shall, and shall require each Service Provider Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Owner and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Service Provider's obligations under this Services Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any Person except (A) as expressly permitted or instructed by Owner, (B) as contemplated pursuant to this Services Agreement, or (C) as required in order to perform the Service Provider Services.
- (c) Service Provider shall, and shall require each Service Provider Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the *Personal Information Protection and Electronic Documents Act* (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of Personal information applicable to Service Provider, each Service Provider Party or to the Project Operations.
- (d) All Project Operations that involve or may involve the collection, use, storage, processing or any other handling of Personal Information shall be performed by Service Provider and each Service Provider Party within Canada, and Service Provider shall, and shall cause each Service Provider Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada.
- (e) Service Provider shall, and shall cause each Service Provider Party to, implement, maintain and adhere to appropriate policies, procedures and controls to ensure that Personal Information of users of Highway 407 East is not stored or processed in, communicated or transferred to, or accessed from, outside of Canada, and that the requirements of this Section 46 are otherwise complied with.
- (f) Owner acknowledges that users of Highway 407 East will include Persons (i) who are not resident in Canada, (ii) for whom the licence plate affixed to their vehicle is registered in a jurisdiction outside of Canada, or (iii) who have otherwise directed/consented to Service Provider or a Service Provider Party communicating Personal Information about or belonging to such Person to a jurisdiction outside of Canada (collectively "**Foreign Individual Users**"). Owner and Service Provider agree that the restrictions contained in Section 46.1(e) and 46.1(f) not to store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada and having appropriate policies, procedures and controls in place to ensure the foregoing, will not apply to Personal Information of Foreign Individual Users.
- (g) Service Provider shall take all necessary and appropriate action, and shall require each Service Provider Party to take all necessary and appropriate action, against any Person who fails to comply with this Section 46.
- (h) Service Provider shall allow Owner on reasonable notice to inspect any Personal Information in the custody or possession of Service Provider or each Service Provider

Party and to audit Service Provider and each Service Provider Party's compliance with this Section 46 including, without limitation, the measures used by Service Provider and each Service Provider Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of Owner with respect to Service Provider or each Service Provider Party's handling of Personal Information.

- (i) Service Provider shall not subcontract or delegate to any third party any of the Project Operations that would result in such subcontractor or delegate having possession or access to Personal Information (collectively, "**PI Vendors**") without the express consent of Owner (which consent shall not be unreasonably withheld), and without obtaining written contractual commitments of such PI Vendors substantially the same as those of this Section 46. Service Provider shall request consent of Owner to any changes to the PI Vendors list and Owner shall respond within **[Redacted]** of receipt of such request and sufficient information necessary for Owner to reasonably assess the proposed new PI Vendor. Owner shall, acting reasonably, promptly determine the sufficiency of information provided by Service Provider, and promptly respond to Service Provider after receiving such request indicating whether or not any further information is required from Service Provider and, if applicable, clearly describing what additional information is required. In the event that Owner disapproves of a PI Vendor, Owner shall clearly indicate in its response to Service Provider the reasons for such disapproval. For certainty, in the event that Owner does not respond to Service Provider's request within such **[Redacted]** and, in Service Provider's reasonable opinion, any further delay will impact the performance of Service Provider Services or Service Provider's compliance with the terms of this Services Agreement, the parties agree that Service Provider's consent request will be deemed approved by Owner.

46.2 Protection of Personal Information

- (a) Service Provider shall implement and use, and shall require each Service Provider Party to implement and use, appropriate technical, organizational and physical security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use, modification or disposal, and shall otherwise ensure that Service Provider, the Service Provider Parties, and its and their staff shall protect, secure and keep confidential any Personal Information.
- (b) Service Provider shall and shall cause each Service Provider Party to restrict access to Personal Information to only those authorized employees and permitted each Service Provider Party that require access to such information to fulfil their job requirements in connection with the Project Operations and that are subject to obligations of confidentiality and Personal Information protection no less stringent than those of this Section 46.
- (c) Upon termination of the Services Agreement or upon request of Owner, whichever comes first, Service Provider shall immediately cease all use of and return to Owner or, at the direction of Owner, dispose of, destroy or render permanently anonymous all Personal Information, in each case using appropriate technical, organizational and physical

security measures to protect Personal Information against loss, theft and unauthorized access, disclosure, copying, use or modification.

- (d) To the extent that any of the Project Operations involve or may involve destruction or disposal of Personal Information, including any disposal or destruction pursuant to (c) above, such activities shall include, at a minimum, irreversible destruction, shredding or pulverizing of all documents, records or media containing Personal Information to a size or state that ensures that the document, record or other medium is permanently destroyed and that no information contained therein can be read, reconstructed or deciphered.
- (e) Service Provider shall immediately inform Owner of any actual or suspected loss, theft or accidental or unauthorized access, disclosure, copying, use, modification or destruction of Personal Information of users of Highway 407 East by Service Provider, any Service Provider Party, any other Person or any other breach of this Section 46.
- (f) Owner may from time to time require that Service Provider and any Service Provider Party or member of its or their staff execute and deliver within two Business Days of such request an agreement satisfactory to Owner, acting reasonably, requiring such Person to keep Personal Information confidential.

46.3 Protection of Personal Information

- (a) Service Provider shall provide, and shall cause each Service Provider Party to provide, in a timely manner, all necessary and reasonable information and co-operation to Owner and to any regulatory or other governmental bodies or authorities with jurisdiction or oversight over Applicable Laws governing the collection, use, disclosure and protection of Personal information in connection with any investigations, audits or inquiries made by any such bodies or authorities under such legislation.
- (b) To the extent of any conflict or inconsistency between this Section 46 and any other provision of the Services Agreement, this Section 46 shall prevail.

47. INSURANCE

47.1 General Requirements

- (a) Service Provider and Owner shall comply with the provisions of Schedule 18 - Insurance Requirements.

47.2 No Relief from Liabilities and Obligations

- (a) Neither compliance nor failure to comply with the insurance provisions of this Services Agreement shall relieve Service Provider or Owner of their respective liabilities and obligations under this Services Agreement.

48. TITLE

48.1 Title

- (a) Title to each item and part of the Toll System Field Equipment that is purchased by Service Provider, including any materials, supplies, equipment, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Owner (or as Owner may direct) upon the receipt of such item on the Site, provided however that title to items of tangible Personal property (as defined in the *Retail Sales Tax Act* (Ontario)) that comprise the Toll System Field Equipment or are to be affixed or attached to the Toll System Field Equipment prior to Phase 1 Substantial Completion, the Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, shall pass to Owner (or as Owner may direct) at the time that such items are included in the Toll System Field Equipment or affixed or attached to the Site. Prior to the applicable substantial completion date, Service Provider shall, at its sole cost and expense, cause to be prepared (and, if necessary, promptly executed by it) all documents, deeds, assurances and instruments required to give effect to the assignment, transfer or conveyance to the Owner of each such item or part of the Toll System Field Equipment that is purchased by Service Provider, including any materials, supplies, equipment, parts and any other deliverable or component items.

49. INDEMNITIES

49.1 Service Provider Indemnities to Owner

- (a) Service Provider shall indemnify and save harmless Owner and each Government Entity and each of their respective directors, officers, employees, board appointees, agents and representatives from and against any and all Direct Losses which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
- (i) a failure by Service Provider to achieve Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date;
 - (ii) a failure by Service Provider to achieve Phase 2a Substantial Completion by the Scheduled Phase 2a Substantial Completion Date;
 - (iii) a failure by Service Provider to achieve Phase 2b Substantial Completion by the Scheduled Phase 2b Substantial Completion Date;
 - (iv) any physical loss of or damage to all or any part of the Site and the Toll System Field Equipment, or to any equipment, assets or other property related thereto;
 - (v) the death or Personal injury of any Person;
 - (vi) any physical loss of or damage to property or assets of any third party; or
 - (vii) any other loss or damage of any third party;

in each case, arising, directly or indirectly, out of, or in consequence of, or involving, or relating to, the performance or, any breach of this Services Agreement by Service Provider or any act or omission of Service Provider or any Service Provider Party, except to the extent caused, or contributed to, by:

- (viii) the breach of this Services Agreement by Owner; or
 - (ix) in respect of Sections 49.1(a)(i) to 49.1(a)(iv), any deliberate or negligent act or omission of Owner, any Owner Party or other Government Entity; or
 - (x) in respect of Sections 49.1(a)(v), 49.1(a)(vi), or 49.1(a)(vii), any act or omission of Owner, any Owner Party or other Government Entity;
 - (xi) a deliberate or negligent act or omission of a visitor to the Site or to the Toll System Field Equipment who was invited by a Government Entity (“**Toll System Visitor**”) that results in undue interference with Service Provider’s performance of the Service Provider Services and Service Provider has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of Owner or an appropriate Owner Party, except to the extent:
 - (A) any such deliberate or negligent act or omission is caused or contributed to by Service Provider or any Service Provider Party; or
 - (B) Toll System Visitor is acting in accordance with a direction, recommendation or instruction of Service Provider or any Service Provider Party.
- (b) Service Provider shall indemnify and save harmless Owner, each Government Entity and each of their respective directors, officers, employees, Board appointees, agents and representatives, from and against any and all Direct Losses which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any breach of a representation or warranty by Service Provider herein.
- (c) Service Provider shall indemnify and save harmless Owner, each Government Entity and each of their respective directors, officers, employees, Board appointees, agents and representatives from and against any and all Direct Losses which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out, or involving or relating to, of any one or more of the following:
- (i) the performance by Service Provider of this Services Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Service Provider to obtain all necessary Permits, Licences and Approvals in accordance with this Services Agreement; or

- (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which Owner or a Government Entity is responsible pursuant to Section 13.1(a);

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Services Agreement by Owner or by any act or omission of Owner, a Government Entity or any Owner Party.

49.2 Owner Indemnities to Service Provider

- (a) Owner shall indemnify and save harmless Service Provider and the Service Provider Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:

- (i) the death or Personal injury of any Person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance of, or breach of, this Services Agreement by Owner or any act or omission of Owner, any Owner Party or other Government Entity, except to the extent caused, or contributed to, by the breach of this Services Agreement by Service Provider or by any act or omission of Service Provider or any Service Provider Party;
- (ii) any physical loss of or damage to all or any part of any property or assets of Service Provider or any Service Provider Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Services Agreement by Owner or any deliberate or negligent act or omission of Owner, any Owner Party or other Government Entity, except to the extent caused, or contributed to, by the breach of this Services Agreement by Service Provider or by any act or omission of Service Provider or any Service Provider Party; and
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Services Agreement by Owner or any deliberate or negligent act or omission of Owner, any Owner Party or other Government Entity, except to the extent caused, or contributed to, by the breach of this Services Agreement by Service Provider or by any act or omission of Service Provider or any Service Provider Party,

provided that there shall be excluded from the indemnity given by Owner any liability for the occurrence of risks against which Service Provider is bound to insure under this Services Agreement to the extent of the proceeds available or that should have been available but for a failure by Service Provider to properly insure in accordance with the terms hereof.

- (b) Owner shall indemnify and save harmless Service Provider and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which

may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any breach of a representation or warranty by Owner herein.

49.3 Conduct of Claims

- (a) This Section 49.3 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 Services Agreement. 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**”.
- (b) 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 49, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within ten 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.
- (c) Subject to Sections 49.3(d), 49.3(e) and 49.3(f), on the giving of 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.
- (d) With respect to any claim conducted by the Indemnifier:
 - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
 - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
 - (iii) 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;

- (iv) 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
 - (v) 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 49.3 relates.
- (e) 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 Services Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 49.3(c);
 - (ii) 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 49.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
 - (iii) the Indemnifier fails to comply in any material respect with Section 49.3(d).
- (f) 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 49.3(c) applies. For greater certainty, Service Provider acknowledges and agrees that where Owner is the Beneficiary, 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 49.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) 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:
- (i) 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
 - (ii) 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.

- (h) Any Person taking any of the steps contemplated by this Section 49.3 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 Services Agreement.

49.4 Mitigation - Indemnity Claims

- (a) For greater certainty, Section 55.4 applies to any indemnity given under this Services Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

50. LIMITS ON LIABILITY

50.1 Indirect Losses

- (a) Without prejudice to Owner's rights under the Payment Mechanism, or the Parties' rights in respect of payments provided for herein, the indemnities under this Services Agreement shall not apply and there shall be no right to claim for any losses or damages for breach of this Services Agreement, in tort or on any other basis whatsoever, to the extent that any loss or damage claimed by either Party is:
 - (i) for punitive, exemplary, aggravated, incidental or special damages;
 - (ii) for loss of profits, loss of data, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (iii) consequential damages or for indirect damages of any nature suffered or allegedly suffered by either Party,(collectively, "**Indirect Losses**").

50.2 No Liability in Tort

- (a) Subject to the indemnities provided herein, none of Owner, any Government Entity or the Owner Parties (but, notwithstanding the definition of "Owner Parties" in this Services Agreement, excluding any Person(s) selected by Owner to design, construct, maintain and finance Highway 407 East and its or their agents, contractors and subcontractors of any tier and its or their directors, officers and employees) shall be liable in tort to Service Provider or any Service Provider Party, and neither Service Provider nor any Service Provider Party shall be liable in tort to Owner, any Government Entity or any Owner Party in respect of any negligent act or omission of any such Person relating to or in connection with this Services Agreement and no such Person shall bring such a claim.

50.3 Sole Remedy

- (a) Subject to:
 - (i) any other rights of Owner expressly provided for in this Services Agreement;
 - (ii) the Owner Termination Fee; and
 - (iii) Owner's right to claim, on or after termination of this Services Agreement, the amount of its Direct Losses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Services Agreement by Service Provider except to the extent that the same has already been recovered by Owner pursuant to this Services Agreement or has been taken into account to reduce any compensation payable by Owner pursuant to Section 43,

the sole remedy of Owner in respect of a failure to provide the Service Provider Services in accordance with this Services Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 50.3(a) shall prevent or restrict the right of Owner to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Services Agreement, neither Party shall be entitled to recover compensation or make a claim under this Services Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Services Agreement, or otherwise.

50.4 Maximum Liability

- (a) Notwithstanding any other provision of this Services Agreement, the maximum aggregate liability of each Party to the other arising out of, or in connection with, or involving, or relating to, either Party's obligations under this Services Agreement shall (i) be limited to Direct Losses and (ii) not exceed (x) in the case of a termination of this Services Agreement by Owner pursuant to Section 39.3, **[\$[Redacted]]** plus System Development Costs as reduced by the depreciation rate as contemplated by Schedule 16 - Compensation on Termination and (y) in all other cases, **[\$[Redacted]]**. The limit (other than the amount related to System Development Costs) shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 18 – Insurance Requirements. These limits shall not apply in cases of **[Redacted]** or **[Redacted]**.
- (b) Nothing in this Section 50.4 shall restrict, limit, prejudice or in any other way impair the rights of Owner under the Payment Mechanism or to receive Toll Revenues and User Fee Revenues (Highway 407 East).

- (c) Nothing in this Section 50.4 shall prevent or restrict the right of Owner to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (d) Notwithstanding any other provision of this Services Agreement, neither Party shall be entitled to recover compensation or make a claim under this Services Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Services Agreement, or otherwise.
- (e) For clarity, the limitations set out in Section 50.4(a) shall (i) include any amount paid by Service Provider in respect of liquidated damages contemplated in this Services Agreement, but shall (ii) exclude any Deductions or deductions for Misconduct deducted from Monthly Service Payments as contemplated by Schedule 14 - Payment Mechanism.
- (f) Unless and until this Services Agreement is terminated by Owner pursuant to Section 39.3, any Deductions or deductions for Misconduct deducted from Monthly Service Payments payable in accordance with Schedule 14 - Payment Mechanism shall be Owner's sole remedy for Service Failures.

51. DISPUTE RESOLUTION PROCEDURE

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 20 - Dispute Resolution Procedure.

52. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

52.1 Service Provider Assignment

- (a) Service Provider shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Services Agreement or any agreement entered into in connection with this Services Agreement without the prior written consent of Owner, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a Person where that Person or its Affiliates is a Restricted Person or a Person whose standing or activities are inconsistent with (1) the Province's reputation or integrity, or (2) the ability of the Province to conduct its business, or (3) maintaining the confidentiality of any Personal Information and the Confidential Information of any Government Entity.

52.2 Owner Assignment

- (a) Owner may assign, transfer, dispose of or otherwise alienate any interest in this Services Agreement or any agreement in connection with this Services Agreement to which Service Provider and Owner are parties:
 - (i) to the Province;
 - (ii) to any minister of the Crown;

- (iii) to a Crown agency having the legal capacity, power, authority and ability to become a party to and to perform the obligations of Owner under this Services Agreement provided that such Person confirms in writing to Service Provider that it will perform all of Owner's obligations hereunder in respect of the period from and after the assignment; and
- (iv) in circumstances other than those described in Sections 52.2(a)(i) to 52.2(a)(iii), with the prior written consent of Service Provider, 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 Service Provider that it will perform all the obligations of Owner hereunder and under any agreement in connection with this Services Agreement to which Service Provider and Owner are parties in respect of the period from and after the assignment;

provided that in each case such assignment, transfer, alienation, disposition or alienation would otherwise result in Service Provider (and such new counterparty) continuing to be in compliance with Applicable Law (including as contemplated in Section 2.3 of this Services Agreement).

- (b) Upon Phase 1 Substantial Completion Date, the Parties agree that the Owner's rights, title and interest in this Services Agreement in respect of the Operational Term for Phase 1 will be assigned to Her Majesty the Queen in right of Ontario as represented by MTO in accordance with this Section 52.2.
- (c) Upon Phase 2a Substantial Completion Date, the Parties agree that the Owner's rights, title and interest in this Services Agreement in respect of the Operational Term for Phase 2a will be assigned to Her Majesty the Queen in right of Ontario as represented by MTO in accordance with this Section 52.2.
- (d) Upon Phase 2b Substantial Completion Date, the Parties agree that the Owner's remaining rights, title and interest in this Services Agreement will be assigned to Her Majesty the Queen in right of Ontario as represented by MTO in accordance with this Section 52.2.
- (e) Owner shall not be released of any of its obligations under this Services Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Services Agreement in accordance with this Section 52.2.

52.3 Subcontractors

- (a) Service Provider shall not subcontract any interest in this Services Agreement to a Restricted Person, or any Affiliate thereof, or a Person whose standing or activities are inconsistent with (1) the Province's reputation or integrity, or (2) the ability of the Province to conduct its business, or (3) the confidentiality of any Personal Information or any Confidential Information of any Government Entity.

52.4 Changes in Ownership and Control

- (a) In respect of any:
- (i) Change in Ownership of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise) any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited:
 - (A) where the Person acquiring the ownership interest is a Restricted Person or a Person whose standing or activities are inconsistent with (1) the Province's reputation or integrity, or (2) the ability of the Province to conduct its business, or (3) the confidentiality of any Confidential Information of any Government Entity or any Personal Information; or
 - (B) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations; or
 - (ii) Change in Control of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise) any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited,

Service Provider may provide written notice to Owner of a proposed Change of Ownership or Change of Control under Sections 52.4(a)(i) or 52.4(a)(ii) (the “**Proposed Change**”) and such notification shall include a statement and diagram identifying the proposed shareholders, partners or unitholders, as applicable, and their respective proposed holdings in the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited, or any Person owning, directly any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited as the case may be. Upon Owner receiving the notice contemplated under this Section 52.4(a), Owner shall have 120 days to notify Service Provider in writing of Owner's intention to exercise Owner's right to terminate this Services Agreement pursuant to Section 41.3 of this Services Agreement (an “**Intention To Terminate Notice**”) with respect to such Proposed Change should the Proposed Change be implemented. In the event such Proposed Change for which Owner has delivered an Intention To Terminate Notice is implemented, Service Provider shall notify Owner in writing within five Business Days of the completion of the Proposed Change and upon delivery of such notice to Owner, Owner will be deemed to have exercised Owner's right to terminate this Services Agreement pursuant to Section 41.3 of this Services Agreement effective on that date.

- (b) If Service Provider does not provide the notice contemplated under Section 52.4(a), Service Provider shall provide written notice to Owner of the completed Change of Ownership or Change of Control under Sections 52.4(a)(i) or 52.4(a)(ii) within five Business Days of such change and such notification shall include a statement and diagram identifying the current shareholders, partners or unitholders, as applicable, and their respective holdings in the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited, or any Person owning, directly any of the shares, partnership interest or units of ownership of Service Provider or 407 ETR Limited as the

case may be. Upon Owner receiving the notice contemplated under this Section 52.4(b), Owner shall have 120 days to notify Service Provider in writing that it is exercising its right to terminate this Services Agreement pursuant to Section 41.3 of this Services Agreement, effective upon the date such notice is delivered to Service Provider.

- (c) For any Change in Ownership of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise) any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited to which Section 52.4(a)(i) would apply (whether or not it would be excluded by virtue of Section 52.4(a)(i)(A) or 52.4(a)(i)(B)), if Service Provider has not provided notice pursuant to Sections 52.4(a) or 52.4(b), Service Provider shall provide notice to Owner of such Change in Ownership of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise) any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited, as the case may be, within five Business Days of such Change in Ownership, and such notification shall include a statement and diagram identifying the then current shareholders, partners or unitholders, as applicable, and their respective holdings in the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise), any of the shares or units of ownership of Service Provider or 407 ETR Limited, as the case may be. Notwithstanding the foregoing, this Section 52.4(c) will not apply to a Change in Ownership or Change in Control to which Sections 52.4(d), (f), (g), (h) (but only to the extent that Section (d) or (f) would also be applicable to such transaction) or (i) would apply.
- (d) This Section 52.4 shall not apply to any Change in Ownership or Change of Control of Service Provider or 407 ETR Limited, or any Person owning directly or indirectly (beneficially or otherwise), any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited where each such transfer of shares, partnership interests or units of ownership relates to an effective interest of less than **[Redacted]**% of the equity securities of Service Provider or 407 ETR Limited. For clarity, and by way of example, if a transfer of shares of a corporation that held **[Redacted]**% of the equity securities in Service Provider occurred, this Section 52.4 would not apply unless the amount of shares of such corporation so transferred equalled **[Redacted]**% of the equity securities of such corporation (being an effective **[Redacted]**% equity interest in Service Provider).
- (e) Section 52.4(d) shall not apply to the extent that upon completion of such transaction the acquirer would have more than a **[Redacted]**% effective interest in Service Provider or 407 ETR Limited where such acquirer had less than or equal to a **[Redacted]**% effective interest in Service Provider and 407 ETR Limited prior to the completion of the transaction.

- (f) This Section 52.4 shall not apply (except in respect of a transaction to which Section 52.4(e) would apply) to any Change in Ownership or Change of Control of Service Provider or 407 ETR Limited, or any Person owning directly or indirectly (beneficially or otherwise), any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited where the acquirer already has an interest, directly or indirectly (beneficially or otherwise), in Service Provider or 407 ETR Limited, or any Person owning directly or indirectly (beneficially or otherwise), any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited.
- (g) Section 52.4(a) and (b) shall not apply to any transaction the parties of which consist solely of: (i) 407 International Inc. and one or more of its wholly-owned subsidiary entities; or (ii) wholly-owned subsidiary entities of 407 International Inc.; provided, however, for any Change of Ownership or Change of Control to which this Section 52.4(g) applies, Service Provider shall provide notice to Owner of such Change in Ownership or Change in Control of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise) any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited, as the case may be, within five Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement and diagram identifying the then current shareholders, partners or unitholders, as applicable, and their respective holdings in the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited, or any Person owning directly (beneficially or otherwise), any of the shares or units of ownership of Service Provider or 407 ETR Limited, as the case may be.
- (h) This Section 52.4 shall not apply to any Change of Control or Change of Ownership of Service Provider or 407 ETR Limited, or any Person owning directly or indirectly (beneficially or otherwise) any of the shares, partnership interests or units of ownership of Service Provider or 407 ETR Limited where the acquirer is a qualifying transferee. For the purposes of this Section, a "qualifying transferee" is: (a) **[Redacted]**; (b) **[Redacted]**; or (c) any of the following: **[Redacted]**, and its affiliates and wholly-owned subsidiary entities, **[Redacted]** and its wholly-owned subsidiary entities, **[Redacted]** and its wholly-owned subsidiary entities, **[Redacted]** and its wholly-owned subsidiary entities, and **[Redacted]** and its wholly-owned subsidiary entities.
- (i) This Section 52.4 shall not apply to a Change in Ownership or Change in Control of Persons whose equity securities, partnership interests or ownership units are listed on a recognized stock exchange.

53. PROHIBITED ACTS

53.1 Definition

- (a) The term "**Prohibited Act**" means:
 - (i) offering, giving or agreeing to give to Owner or any public body (or anyone employed by or acting on their behalf), or to any family member of such Person, any gift or consideration of any kind as an inducement or reward:

- (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Services Agreement or any other agreement with Owner or any public body in connection with the Project; or
- (B) for showing or not showing favour or disfavour to any Person in relation to this Services Agreement or any other agreement with Owner or any public body in connection with the Project;

provided that this Section 53.1(a)(i) shall not apply to Service Provider or any Service Provider Party (or anyone employed by or acting on their behalf) providing consideration to Owner or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Service Provider under this Services Agreement or any other agreement with Owner or any public body in connection with the Project;

- (ii) entering into this Services Agreement or any other agreement with Owner or any public body in connection with the Project for which a commission or a fee has been paid or has been agreed to be paid by Service Provider, or on its behalf or to its knowledge, Owner or any public body (or anyone employed by or acting on their behalf), or to any family member of such Person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to Owner, provided that this Section 53.1(a)(ii) shall not apply to a fee or commission paid by Service Provider or any Service Provider Party (or anyone employed by or acting on their behalf) to Owner or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Service Provider under this Services Agreement or any other agreement with Owner or any public body in connection with the Project without contravening the intent of this Section 53;
- (iii) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts, or at common law, in respect of fraudulent acts in relation to this Services Agreement or any other agreement with Owner or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud Owner or any other public body.

53.2 Warranty

- (a) Service Provider warrants that, in entering into this Services Agreement, it has not committed any Prohibited Act.

53.3 Remedies

- (a) If Service Provider or any Service Provider Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Owner shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Service Provider or by an employee acting under the direction of a director or officer of Service Provider, then Owner may give written notice to Service Provider and Section 39 shall apply;
 - (ii) if the Prohibited Act is committed by an employee of Service Provider acting independently of a direction of a director or officer of Service Provider, then Owner may give written notice to Service Provider and Section 39 shall apply, unless, within 30 days of receipt of such notice, Service Provider terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another Person;
 - (iii) if a Prohibited Act is committed by a Service Provider Party or by an employee of that Service Provider Party acting under the direction of a director or officer of that Service Provider Party, then Owner may give written notice to Service Provider and Section 39 shall apply, unless, within 30 days of receipt of such notice, Service Provider terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another Person, where relevant, in accordance with Section 52.3;
 - (iv) if the Prohibited Act is committed by an employee of a Service Provider Party acting independently of a direction of a director or officer of that Service Provider Party, then Owner may give notice to Service Provider and Section 39 shall apply, unless, within 30 days of receipt of such notice, Service Provider causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another Person; and
 - (v) if the Prohibited Act is committed on behalf of Service Provider or a Service Provider Party by a Person not specified in Sections 53.3(a)(i) to 53.3(a)(iv), then Owner may give notice to Service Provider and Section 39 shall apply, unless, within 30 days of receipt of such notice, Service Provider causes the termination of such Person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another Person.
- (b) Any notice of termination under this Section 53.3 shall specify:
 - (i) the nature of the Prohibited Act;
 - (ii) the identity of the Person whom Owner believes has committed the Prohibited Act; and

With a copy to: Ministry of Transportation
1201 Wilson Avenue
Bldg "D", 7th Floor
Toronto, Ontario M3M 1J8
Fax No.: [Redacted]
Attn: [Redacted]

If to Service Provider: Canadian Tolling Company International Inc.
6300 Steeles Avenue West
Woodbridge, Ontario L4H 1J1
Fax No.: [Redacted]
Attn: [Redacted]

With a copy to: [Redacted]

54.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 54.1, where any Notice is to be provided or submitted to the Owner Representative or the Service Provider Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Service Provider Representative:

Canadian Tolling Company International Inc.
6300 Steeles Avenue West
Woodbridge, Ontario L4H 1J1
Fax No.: [Redacted]
Attn.: [Redacted]

If to the Owner Representative: Ontario Infrastructure and Lands Corporation
777 Bay Street
Toronto, Ontario M5G 2C8
Fax No.: [Redacted]
Attn.: [Redacted]

With a copy to: Ontario Infrastructure and Lands Corporation
777 Bay Street
Toronto, Ontario M5G 2C8
Fax No.: [Redacted]
Attn.: [Redacted]

- (b) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 54.2.

54.3 Change of Address

- (a) Either Party to this Services Agreement may, from time to time, change any of its contact information set forth in Sections 54.1 or 54.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

54.4 Deemed Receipt of Notices

- (a) Subject to Sections 54.4(b), 54.4(c) and 54.4(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) 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 transmission in accordance with this Section 54.
- (c) 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 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) 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.

54.5 Service on Owner

- (a) Where any Notice is required to be served on Owner, the obligation to serve such Notice shall be fulfilled by serving it on Owner in accordance with the provisions of this Section 54.

55. GENERAL

55.1 Amendments

- (a) This Services Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Services Agreement.

55.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Services Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) 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.

55.3 Relationship Between the Parties

- (a) The Parties are independent contractors. This Services Agreement is not intended to and does not create or establish between the Parties, or between Owner and any Service Provider Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Services Agreement), of principal and agent, and does not create or establish any relationship whatsoever between Owner and any representative or employee of Service Provider or the Service Provider Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this Services Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any Person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
 - (ii) neither Party shall be required to make or pay employment benefits, contributions, or premiums for Employment Insurance, Canada Pension Plan, Workplace Safety Insurance Board or other similar levies with respect to any Persons employed or engaged by the other Party;
 - (iii) except as otherwise expressly provided in this Services Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Services Agreement; and
 - (iv) any Person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Services Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such Person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

55.4 General Duty to Mitigate

- (a) Owner and Service Provider shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Services Agreement.

55.5 Actual Knowledge

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Service Provider and Owner shall, for all purposes of this Services Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by their respective directors and officers.

55.6 Entire Agreement

- (a) Except where provided otherwise in this Services Agreement, this Services Agreement constitutes the entire agreement between the Parties in connection with their subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Services Agreement. For greater certainty, and notwithstanding any provision of this Services Agreement including Section 27, this Services Agreement shall not amend, vary, infringe or waive any right or obligation of any party to the CGLA; provided, however, this Services Agreement includes the limited CGLA waiver of rights to be executed by the Minister of Transportation in the form attached hereto as Appendix “A” and Appendix “A-1”. For clarity, the obligations of Service Provider are obligations of it alone and 407 ETR Limited will not be responsible for any action or inaction of Service Provider under this Agreement.

55.7 No Reliance

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this Services Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any Person, whether a Party to this Services Agreement or not, except those expressly made, given or repeated in this Services Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Services Agreement; and
 - (ii) this Section 55.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Services Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Services Agreement.

55.8 Severability

- (a) Each provision of this Services Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Services Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Services Agreement. If any such provision of this Services Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Services Agreement as near as possible to its original intent and effect.

55.9 Enurement

- (a) This Services Agreement and any other agreement entered into in connection with the Project to which both Owner and Service Provider are parties shall enure to the benefit of, and be binding on, Owner and Service Provider and their respective successors and permitted transferees and assigns.

55.10 Governing Law and Jurisdiction

- (a) This Services Agreement, and each of the documents contemplated by or delivered under or in connection with this Services Agreement, 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.
- (b) Subject to Schedule 20 - Dispute Resolution Procedure and subject to the *Proceedings Against the Crown Act* (Ontario), both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Services Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

55.11 Cumulative Remedies

- (a) Except as otherwise set forth in this Services Agreement, the rights, powers and remedies of each Party set forth in this Services Agreement 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 Services Agreement.

55.12 Further Assurance

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Services Agreement.

55.13 Costs

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Services Agreement.

55.14 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Services Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Services Agreement shall be in English.

55.15 Proof of Authority

- (a) Owner and Service Provider each reserve the right to require any Person executing this Services Agreement on behalf of the other Party to provide proof, in a form acceptable to Owner or Service Provider, as applicable, each acting reasonably, that they have the requisite authority to execute this Services Agreement on behalf of and to bind Owner or Service Provider, as applicable.

55.16 Counterparts

- (a) This Services Agreement 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 Services Agreement which was so faxed.

55.17 Government Entities as Third Party Beneficiaries

- (a) The provisions of Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 7.1(c), 8.1(a)(ii)(H), 15.3(e), 23.4(b), 30.8(b), 44.9(a), 44.11, 45, 49.1 and 50.2(a) are:
 - (i) intended for the benefit of each Government Entity and, if set out in the relevant Section, each Government Entity's directors, officers, employees, Board appointees, agents and representatives, and shall be enforceable by each of such Persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Third Party Beneficiaries**"); and

- (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) Owner shall hold the rights and benefits of Sections 3.1(b), 6.1, 6.2(a), 6.3(a), 7.1(c), 8.1(a)(ii), 15.3(e), 23.4(b), 30.8(b), 44.9(a), 44.11, 45, 49.1 and 50.2(a) in trust for and on behalf of the Third Party Beneficiaries and Owner hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

55.18 Third Party Beneficiaries of Service Provider

- (a) The provisions of Sections 45, 49.2, 50.2(a), 55.6(a), 21.4(b), 21.9, Section 3 of Schedule 26 are:
 - (i) intended for the benefit of each Service Provider Party and, if set out in the relevant Section, each of the Service Provider's and Service Provider Parties' directors, officers, employees, Board appointees, agents and representatives, and shall be enforceable by each of such Persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Service Provider Third Party Beneficiaries**"); and
 - (ii) are in addition to, and not in substitution for, any other rights that the Service Provider Third Party Beneficiaries may have by contract or otherwise.
- (b) Service Provider shall hold the rights and benefits of Sections 45, 49.2, 50.2(a), 55.6(a), 21.4(b), 21.9, Section 3 of Schedule 26 in trust for and on behalf of the Service Provider Third Party Beneficiaries and Service Provider hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Service Provider Third Party Beneficiaries.

55.19 Service Provider Performance Commitment

[Redacted]

IN WITNESS WHEREOF the Parties have executed this Services Agreement as of the date first above written.

HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO AS REPRESENTED BY
THE MINISTER OF ECONOMIC
DEVELOPMENT, EMPLOYMENT AND
INFRASTRUCTURE,
AS REPRESENTED BY ONTARIO
INFRASTRUCTURE AND LANDS
CORPORATION

Per: _____
Name: **[Redacted]**
Title: **[Redacted]**

[Redacted]

Per: _____
Name: **[Redacted]**
Title: **[Redacted]**

Per: _____
Name: **[Redacted]**
Title: **[Redacted]**

I/We have authority to bind the corporation.

APPENDIX "A"

NOTIFICATION REGARDING LIMITED WAIVER OF RIGHTS

WHEREAS 407 ETR Concession Company Limited ("407 ETR") and the Her Majesty the Queen in Right of Ontario, as represented by the Minister of Transportation ("the Crown") entered into a Concession and Ground Lease Agreement (the "CGLA") dated April 6, 1999, as amended, pursuant to which 407 ETR has the right and obligation to construct, maintain, operate and toll Highway 407 for a period of 99 years;

AND WHEREAS capitalized terms herein not otherwise defined shall have the meaning attributed to them in the CGLA.

AND WHEREAS subsections 2.5 (a), (b), and (c) of the CGLA limit 407 ETR's use of the Highway 407 Lands and related assets for purposes solely related to Highway 407 as those terms are defined in the CGLA;

AND WHEREAS section 8.6 of the CGLA provides that the Crown has control over all revenues other than Toll Revenues charged by or on behalf of the Concessionaire in connection with the operation of Highway 407 ("Other Revenues");

AND WHEREAS an affiliate of 407 ETR, Canadian Tolling Company International Inc. ("Cantoll") and Ontario Infrastructure and Lands Corporation ("IO") on behalf of the Crown, are intending to enter into a tolling and back office services agreement, effective on a future date to be determined (the "Highway 407 East Tolling and Back Office Services Agreement"). The Highway 407 East Tolling and Back Office Services Agreement requires Highway 407 Lands and related assets to be utilized to provide various functions relating to the tolling and back office services for Highway 407 East on behalf of the Crown, resulting in Other Revenues, all as to be more fully described in the Highway 407 East Tolling and Back Office Services Agreement;

AND WHEREAS subsections 2.5(a), (b) and (c) of the CGLA may preclude Cantoll from fulfilling some of its obligations under the Highway 407 East Tolling and Back Office Services Agreement, and section 8.6 of the CGLA may preclude Other Revenues from being distributed as provided for in the Highway 407 East Tolling and Back Office Services Agreement;

AND WHEREAS pursuant to section 1.15 of the CGLA, a party to the CGLA may consent or waive the requirements of any provision of the CGLA for specific instances and purposes, provided such consent is in writing and signed by the party providing it.

NOW THEREFORE, this notification, provided pursuant to section 1.15 of the CGLA, is notice that should Cantoll and IO on behalf of the Crown execute a Highway 407 East Tolling and Back Office Services Agreement, the Crown consents to waive the requirements of subsection 2.5(a), (b), and (c), and section 8.6 of the CGLA, for the sole and limited purpose and only to the extent necessary for Cantoll to fulfill its obligations under the Highway 407 East Tolling and Back Office Services Agreement, and for 407 ETR to provide services to Cantoll for that purpose, until the conclusion of the Termination Assistance Period as such term is defined in Schedule 22 of the Highway 407 East Tolling and Back Office Services Agreement. In all other respects and for all other purposes, other than as specifically indicated herein, the provisions of the CGLA shall remain in full force and effect.

For the further avoidance of doubt, any use of Highway 407 Lands and related assets for purposes not permitted by the provisions of the CGLA or this waiver of rights, may be a Concessionaire Default under the CGLA, and the Crown may be entitled to the remedies provided for in section 20.2 of the CGLA.

The waiver of rights set out in this notification shall take effect on the effective date of the Highway 407 East Tolling and Back Office Services Agreement and shall cease to apply and shall come to an end immediately upon conclusion of the Termination Assistance Period as such term is defined in Schedule 22 of the Highway 407 East Tolling and Back Office Services Agreement.

The Crown acknowledges and agrees that the Highway 407 East Tolling and Back Office Services Agreement does not constitute a "Project Agreement" for the purposes of the CGLA.

Signed this __ day of _____, 2011

THE CROWN IN RIGHT OF ONTARIO

AS REPRESENTED BY THE MINISTER OF TRANSPORTATION

By: _____

Name:

Title:

APPENDIX “A-1”

See attached.

APPENDIX "A"**NOTIFICATION REGARDING LIMITED WAIVER OF RIGHTS**

WHEREAS 407 ETR Concession Company Limited ("407 ETR") and the Her Majesty the Queen in Right of Ontario, as represented by the Minister of Transportation ("the Crown") entered into a Concession and Ground Lease Agreement (the "CGLA") dated April 6, 1999, as amended, pursuant to which 407 ETR has the right and obligation to construct, maintain, operate and toll Highway 407 for a period of 99 years;

AND WHEREAS capitalized terms herein not otherwise defined shall have the meaning attributed to them in the CGLA.

AND WHEREAS subsections 2.5 (a), (b), and (c) of the CGLA limit 407 ETR's use of the Highway 407 Lands and related assets for purposes solely related to Highway 407 as those terms are defined in the CGLA;

AND WHEREAS section 8.6 of the CGLA provides that the Crown has control over all revenues other than Toll Revenues charged by or on behalf of the Concessionaire in connection with the operation of Highway 407 ("Other Revenues");

AND WHEREAS an affiliate of 407 ETR, Canadian Tolling Company International Inc. ("Cantoll") and Ontario Infrastructure and Lands Corporation ("IO") on behalf of the Crown, entered into a tolling and back office services agreement, dated as of November 15, 2011 (the "Original Highway 407 East Tolling and Back Office Services Agreement") related to Phase 1 of Highway 407 East.

AND WHEREAS Cantoll and the Crown, as represented by IO, are intending to enter into an amended and restated tolling and back office services agreement, effective on a future date to be determined (the "Amended Highway 407 East Tolling and Back Office Services Agreement" and, as may be further amended, supplanted or restated from time to time by the parties thereto, the "Highway 407 East Tolling and Back Office Services Agreement"), amending and restating the Original Highway 407 East Tolling and Back Office Services Agreement to provide for additional obligations related to Phases 2a and Phase 2b of Highway 407 East, in addition to those related to Phase 1.

AND WHEREAS the Highway 407 East Tolling and Back Office Services Agreement requires Highway 407 Lands and related assets to be utilized to provide various functions relating to the tolling and back office services for Highway 407 East on behalf of the Crown, resulting in Other Revenues, all as to be more fully described in the Highway 407 East Tolling and Back Office Services Agreement;

AND WHEREAS subsections 2.5(a), (b) and (c) of the CGLA may preclude Cantoll from fulfilling some of its obligations under the Highway 407 East Tolling and Back Office Services Agreement, and section 8.6 of the CGLA may preclude Other Revenues from being distributed as provided for in the Highway 407 East Tolling and Back Office Services Agreement;

AND WHEREAS pursuant to section 1.15 of the CGLA, a party to the CGLA may consent or waive the requirements of any provision of the CGLA for specific instances and purposes, provided such consent is in writing and signed by the party providing it.

NOW THEREFORE, this notification, provided pursuant to section 1.15 of the CGLA, is notice that should Cantoll and IO on behalf of the Crown execute a Highway 407 East Tolling and Back Office Services Agreement, the Crown consents to waive the requirements of subsection 2.5(a), (b), and (c), and section 8.6 of the CGLA, for the sole and limited purpose and only to the extent necessary for Cantoll to fulfill its obligations under the Highway 407 East Tolling and Back Office Services Agreement, and for 407 ETR to provide services to Cantoll for that purpose, until the conclusion of the Termination Assistance Period as such term is defined in Schedule 22 of the Highway 407 East Tolling and Back Office Services Agreement. In all other respects and for all other purposes, other than as specifically indicated herein, the provisions of the CGLA shall remain in full force and effect.

For the further avoidance of doubt, any use of Highway 407 Lands and related assets for purposes not permitted by the provisions of the CGLA or this waiver of rights, may be a Concessionaire Default under the CGLA, and the Crown may be entitled to the remedies provided for in section 20.2 of the CGLA.

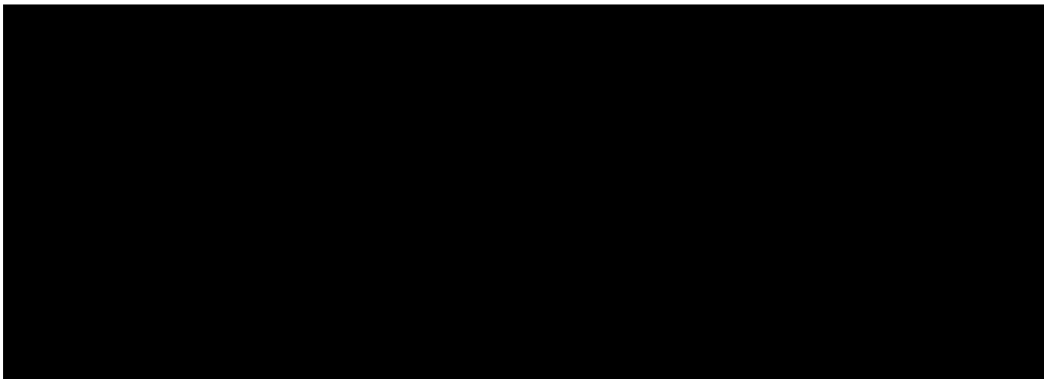
The waiver of rights set out in this notification shall take effect on the effective date of the Highway 407 East Tolling and Back Office Services Agreement and shall cease to apply and shall come to an end immediately upon conclusion of the Termination Assistance Period as such term is defined in Schedule 22 of the Highway 407 East Tolling and Back Office Services Agreement.

The Crown acknowledges and agrees that the Highway 407 East Tolling and Back Office Services Agreement does not constitute a "Project Agreement" for the purposes of the CGLA.

Signed this __ day of _____, 2015

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

AS REPRESENTED BY THE MINISTER OF TRANSPORTATION



SCHEDULE 1

DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Services Agreement, unless the context otherwise requires:
 - 1.1 “**407ETR**” means Highway 407ETR.
 - 1.2 “**407ETR Tolling System**” means the Service Provider’s tolling system and back office operations in respect of 407ETR.
 - 1.3 “**407 East Act**” means the *Highway 407 East Act, 2012* (Ontario) as it exists on the date hereof.
 - 1.4 “**407 ETR Limited**” means 407 ETR Concession Company Limited, the private sector party to the concession and ground lease agreement, dated April 1, 1999, as entered into with Her Majesty the Queen in right of Ontario, as represented by the Minister Without Portfolio for Privatization, pursuant to which 407 ETR Limited has the right and obligation to construct, maintain, operate and toll Highway 407 for a period of 99 years.
 - 1.5 “**Additional Equipment**” means all equipment (other than Service Provider Equipment) which Owner requires Service Provider to procure pursuant to a Variation and is or will be affixed to the Site.
 - 1.6 “**Additional Works**” means those works in relation to the Toll System Field Equipment or the Site which are not Works or Service Provider Services and which are to be carried out by an Owner Party, including works or services to be performed either before or after the Phase 1 Substantial Completion, the Phase 2a Substantial Completion, or the Phase 2b Substantial Completion, as applicable.
 - 1.7 “**Adjudicator**” has the meaning given in Schedule 20 – Dispute Resolution.
 - 1.8 “**Affiliate**” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Service Provider or any Service Provider Party, shall include each of its unitholders, shareholders, partners or owners, as the case may be.
 - 1.9 “**Amended and Restated Effective Date**” means October 7, 2015.
 - 1.10 “**Applicable Law**” means:
 - (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and

- (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,

in each case, (1) in force in the Province of Ontario, or otherwise binding on Service Provider, any Service Provider Party, Owner or any Owner Party, as applicable, and (2) as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.

- 1.11 “**As Built Drawings**” means drawings and information prepared by Service Provider in respect of the Toll System Field Equipment in a format and with content and details that Owner, acting reasonably, considers appropriate.
- 1.12 “**Associated Tax Liabilities**” has the meaning given to such term in Section 30.8 of the Services Agreement.
- 1.13 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.14 “**Background Information**” means the preliminary traffic information in respect of Highway 407 East titled “Avg Trip Lengths Results – 20132031 – July 10 to ETR” given or made available to Service Provider prior to the Effective Date and that (i) pertains solely to Highway 407 East and (ii) does not otherwise form part of this Services Agreement.
- 1.15 “**Base Progress Payments**” means all progress payments to be made in respect of the Works performed on or before the last day of the agreed monthly payment period ending immediately prior to the Phase 1 Substantial Completion Date, the Phase 2a Substantial Completion Date, or the Phase 2b Substantial Completion Date, as applicable, in respect of the Target Price, as adjusted herein.
- 1.16 “**Beneficiary**” has the meaning given in Section 49.3(a) of the Services Agreement.
- 1.17 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.18 “**Business Day**” means a day on which the offices of the Province are open generally for the conduct of public business, but it is understood that the following days shall not be considered Business Days:
- (i) any Saturday or Sunday;
 - (ii) New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada (Dominion) Day, the August Civic Holiday (Simcoe Day),

- Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, and Boxing Day;
- (iii) any other day proclaimed as a public holiday by the Lieutenant Governor of Ontario or the Governor General of Canada;
 - (iv) when any of the public holidays set out in paragraph (ii) falls on a Saturday or a Sunday, the Monday following such public holiday; and
 - (v) when Christmas Day falls on a Saturday or Sunday, the Tuesday following Christmas Day.
- 1.19 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, 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.
- 1.20 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.21 “**CGLA**” means the Highway 407 Concession and Ground Lease Agreement dated April 6, 1999, as amended, between Her Majesty the Queen in right of Ontario, as represented by the Minister Without Portfolio For Privatization and 407 ETR Limited.
- 1.22 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the direct power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
 - (c) any other change of direct or indirect power to direct or cause the direction of the management, actions or policies of such person.
- 1.23 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario, in each case after the Effective Date.
- 1.24 “**Change in Ownership**” means, with respect to a person, any change in direct ownership (beneficial or otherwise) of any of the shares or units of ownership of such person, or in the direct power to vote or transfer any of the shares or units of ownership of such person.

- 1.25 “**CLA**” the *Construction Lien Act* (Ontario), as amended or replaced from time to time.
- 1.26 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 9 - Outline Commissioning Program;
 - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
 - (c) recommended by the manufacturer of any part of the Toll System Field Equipment; and
 - (d) required to be included in the Final Commissioning Program by the Independent Certifier or the Owner Representative during its development pursuant to Section 20.1 of the Services Agreement.
- 1.27 “**Common Customer**” has the meaning given to such term in Section 44.4 of the Services Agreement.
- 1.28 “**Compensation Event**” has the meaning given in Section 35.1(a) of the Services Agreement.
- 1.29 “**Confidant**” has the meaning given in Section 45.6(a)(i) of the Services Agreement.
- 1.30 “**Confidential Information**” means all confidential and proprietary information which is supplied or made available by or on behalf of a Party, whether before or after the Effective Date.
- 1.31 “**Confidential Information of a Government Entity**” or “**Confidential Information of any Government Entity**” means all or part of the following:
- (a) all information of a Government Entity that is of a proprietary or confidential nature, regardless of whether it is identified as proprietary or confidential or not, and whether recorded or not, however fixed, stored, expressed or embodied, which comes to the knowledge, possession or control of Service Provider or a Service Provider Party or to which Service Provider or a Service Provider Party has access as a result of performing the Project Operations, including all information to be transmitted, converted, recovered, stored or processed in relation to or on any network or computer system;
 - (b) any information that a Government Entity is obliged not to, or has the discretion not to, disclose pursuant to Applicable Law, including FIPPA;
 - (c) all Government Sensitive Information;
 - (d) any information of third parties that a Government Entity is required to keep confidential and which is identified as proprietary or confidential; and

- (e) any information comprising the databases of a Government Entity or the procedures and operational protocols and information relating to the operations of a Government Entity and that Service Provider or any Service Provider Party may have access to for purposes of the Services Agreement.
- 1.32 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Services Agreement.
- 1.33 “**Contract Month**” has the meaning given to such term in Section 1 of Schedule 14.
- 1.34 “**Contract Year**” has the meaning given in Schedule 14 – Payment Mechanism.
- 1.35 “**Corrective Maintenance**” means any maintenance, repair or restoration of equipment, systems or building in respect of the Toll System Field Equipment which maintenance, repair or restoration is conducted in order to remedy a breakdown of such equipment, system or is conducted in order to achieve standard operating performance for such equipment, system or building, and includes, without limitation, repairing collateral damage related to equipment beyond the immediate component that failed, but excludes, for greater certainty, Preventive Maintenance, Predictive Maintenance and Small Works.
- 1.36 “**CPI**” means CPI-XFET, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 20 - Dispute Resolution Procedure, most closely resembles such index.
- 1.37 “**CPIo**” is the value of CPI at the Effective Date, to be determined by reference to the relevant index in the month immediately preceding the Effective Date.
- 1.38 “**CPIy**” is the value of CPI on April 1 of the relevant Contract Year “y”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.39 “**Data Collection and Retention Procedures and Reports**” has the meaning set out in Schedule 28 – Output Specifications – Part B – Services Output Specifications.
- 1.40 “**Deduction**” has the meaning given to such term in Section 1 of Schedule 14.
- 1.41 “**Default Interest Rate**” means simple interest at an annual rate equal to **[Redacted]**% over the rate of interest per annum quoted by **[Redacted]** from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.

- 1.42 “**Delay Events**” has the meaning given in Section 34.1(a) of the Services Agreement.
- 1.43 “**Design and Construction Output Specifications**” means the design and construction output specifications contained in (a) Part A of Schedule 28 – Output Specifications and (b) the Tolling Infrastructure Specifications.
- 1.44 “**Design Data**” means all drawings, reports, documents, plans, formulae, calculations, manuals and other data that are provided by Service Provider or any Service Provider Party and that relate to the design, construction, testing, commissioning or operation of the Toll System Field Equipment (but excluding Intellectual Property rights of third parties [Redacted] and the transponder encryption software, algorithms and technology, such as CAD software).
- 1.45 “**Development Approval**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences and Approvals required from time to time for construction of the Toll System Field Equipment.
- 1.46 “**Direct Cost**” has the meaning given in Schedule 15 -Variation Procedure.
- 1.47 “**Direct Losses**” means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a full indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.48 “**Discriminatory Change in Law**” means any Change in Law, the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) tolled highways whose design, construction and management are procured by a contract similar to the Services Agreement in relation to other similar facilities;
 - (b) the Toll System in relation to other systems similar to a toll system;
 - (c) Service Provider in relation to other Persons; or
 - (d) Persons undertaking projects for design, construction and management that are procured by a contract similar to the Services Agreement in relation to other Persons undertaking similar projects procured on a different basis,
- except that such Change in Law shall not be a Discriminatory Change in Law:
- (e) where it is in response to any act or omission on the part of Service Provider which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
 - (f) solely on the basis that its effect on Service Provider is greater than its effect on other entities similar to Service Provider; or

- (g) where such Change in Law is a change in Taxes that affects persons generally.
- 1.49 “**Dispute**” has the meaning given in Schedule 20 - Dispute Resolution Procedure.
- 1.50 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 20 – Dispute Resolution Procedure.
- 1.51 “**Effective Date**” means November 15, 2011.
- 1.52 “**Emergency**” means any situation, event, occurrence, or multiple occurrences that:
- (a) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and/or safety of persons;
 - (b) causes or may cause damage or harm to systems, property, buildings and/or equipment; or
 - (c) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Toll System Field Equipment, any part of the Site and/or the conduct of the Project Operations,
- and which, in the opinion of Owner, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing.
- 1.53 “**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.
- 1.54 “**Estimate**” has the meaning given in Schedule 15 – Variation Procedure.
- 1.55 “**Estimated Increased Maintenance Costs**” has the meaning given in Section 23.3(b) of the Services Agreement.
- 1.56 “**Excusing Cause**” has the meaning given in Section 36.1(a) of the Services Agreement.
- 1.57 “**Existing Service Provider IP**” means all data, documents, drawings, reports, plans, software, licences, formulae, calculations and other designs or materials, and the Intellectual Property therein, which is at any time before or after the Effective Date, created, brought into existence, acquired or used by Service Provider in connection with the Project Operations and all improvements, modifications and enhancements thereto (whether created solely by Service Provider or jointly with Owner or any third party).
- 1.58 “**Expiry Date**” means the 10th anniversary of the original Scheduled Phase 1 Substantial Completion Date, without taking into account any extensions to such date

pursuant to Section 34 of the Services Agreement, but as may be extended pursuant to Section 2.2 of the Services Agreement.

- 1.59 **“Final Commissioning Program”** means the program to be developed by Service Provider and reviewed by Owner in accordance with Section 20.1 of the Services Agreement.
- 1.60 **“Final Phase 1 Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 20.8 of the Services Agreement.
- 1.61 **“Final Phase 1 Completion Date”** means the date on which Final Phase 1 Completion is achieved as evidenced by the Final Phase 1 Completion Certificate, as such date shall be stated therein.
- 1.62 **“Final Phase 1 Completion Notice”** has the meaning given in Section 20.8(b) of the Services Agreement.
- 1.63 **“Final Phase 1 Completion”** means the completion of the Works related to Phase 1 in accordance with the Services Agreement, including completion of all Minor Deficiencies.
- 1.64 **“Final Phase 2a Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 20.8 of the Services Agreement.
- 1.65 **“Final Phase 2a Completion Date”** means the date on which Final Phase 2a Completion is achieved as evidenced by the Final Phase 2a Completion Certificate, as such date shall be stated therein.
- 1.66 **“Final Phase 2a Completion Notice”** has the meaning given in Section 20.8(b) of the Services Agreement.
- 1.67 **“Final Phase 2a Completion”** means the completion of the Works related to the Phase 2a in accordance with the Services Agreement, including completion of all Minor Deficiencies.
- 1.68 **“Final Phase 2b Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 20.8 of the Services Agreement.
- 1.69 **“Final Phase 2b Completion Date”** means the date on which Final Phase 2b Completion is achieved as evidenced by the Final Phase 2b Completion Certificate, as such date shall be stated therein.
- 1.70 **“Final Phase 2b Completion Notice”** has the meaning given in Section 20.8(b) of the Services Agreement.
- 1.71 **“Final Phase 2b Completion”** means the completion of the Works related to Phase 2b in accordance with the Services Agreement, including completion of all Minor Deficiencies.

- 1.72 “**Financial Close**” means the date upon which a Project Agreement comes into effect.
- 1.73 “**FIPPA**” means the Freedom of Information and Protection of Privacy Act (Ontario).
- 1.74 “**Force Majeure**” has the meaning given in Section 38.1(a) of the Services Agreement.
- 1.75 “**Force Majeure Termination Sum**” has the meaning given in Schedule 16 – Compensation on Termination.
- 1.76 “**Foreign Business Users**” has the meaning given to such term in Section 45.5 of the Services Agreement.
- 1.77 “**Foreign Individual Users**” has the meaning given to such term in Section 46.1 of the Services Agreement.
- 1.78 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.79 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Owner, any aspect of the performance of the Services Agreement or the operation of the Toll System and/or the 407ETR Tolling System, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.80 “**Government Entity**” means any one or more of the Province, MEDEI, Owner and MTO.
- 1.81 “**Government Sensitive Information**” means any information which is designated as such by the Province from time to time, or which a reasonable person, having regard to the circumstances, would regard as sensitive, including (i) all confidential information that is designated as such by Applicable Law, (ii) all information that relates to the security of the Province, its premises, systems, databases and networks, matters of provincial or national security, and (iii) any record, the disclosure of which could be injurious to the interests of the Province.
- 1.82 “**H&S Conviction**” has the meaning given in Section 39.1(a)(xvii) of the Services Agreement.

- 1.83 “**Harmony Road**” means the eastern limit of the Harmony Road interchange, which is the eastern limit of the Main Line;
- 1.84 “**Hazardous Materials**” has the meaning given in Section 25.2(a) of the Services Agreement;
- 1.85 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.86 “**Heritage Guidelines and Protocols**” means the Government of Ontario’s Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery and the Cultural Heritage Protocol Agreement between ORC and the Ministry of Culture and Communications.
- 1.87 “**Highway 407 East**” has the meaning given in the recitals to the Services Agreement.
- 1.88 “**Highway 407 East Construction**” means the construction of Highway 407 East as a closed ticket tolled highway by the Owner and any Owner Party.
- 1.89 “**Highway 412**” means the freeway located in the municipality of Whitby traversing in a North-South direction from Highway 401 to the east-west portion of Highway 407 East.
- 1.90 “**Highway 418**” means the freeway located in the municipality of Clarington traversing in a North-South direction from Highway 401 to the east-west portion of Highway 407 East.
- 1.91 “**HST**” means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.92 “**Indemnifier**” has the meaning given in Section 49.3(a) of the Services Agreement.
- 1.93 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Services Agreement.
- 1.94 “**Independent Certifier Agreement**” means the contract entered into between Service Provider, Owner and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.95 “**Indirect Losses**” has the meaning given in Section 50.1(a) of the Services Agreement.
- 1.96 “**Innovation Proposal**” has the meaning given in Section 33.2(b) of the Services Agreement.

- 1.97 “**Intellectual Property**” means, in connection with a specified subject matter, all Canadian registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations in Canada in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.98 “**Incremental Rate**” has the meaning given to such term in Section 21.7 of the Services Agreement.
- 1.99 “**Incremental Transponders**” has the meaning given to such term in Section 21.7 of the Services Agreement.
- 1.100 “**Indemnifiable Taxes**” has the meaning given to such term in Section 30.8 of the Services Agreement.
- 1.101 “**Innovation Proposal**” has the meaning given to such term in Section 33.2 of the Services Agreement.
- 1.102 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the Effective Date, created, brought into existence or acquired by Service Provider solely for any or all of the purposes of:
- (a) the Toll System Field Equipment, including the design and construction of the Toll System Field Equipment (excluding rights in Intellectual Property of third parties, such as CAD software, that is used only in the process of design and construction);
 - (b) any other Project Operations; or
 - (c) the Services Agreement;
- but excluding Existing Service Provider IP and any third party Intellectual Property.
- 1.103 “**Intention to Terminate**” has the meaning given to such term in Section 52.4 of the Services Agreement.
- 1.104 “**IO**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended

- 1.105 “**Irrecoverable Tax**” has the meaning given to such term in Section 30.4 of the Services Agreement.
- 1.106 “**Jointly Developed Materials**” has the meaning given in Section 44.5(a) of the Services Agreement.
- 1.107 “**Key Performance Indicators**” are set out in the Services Output Specifications.
- 1.108 “**Main Line**” means the throughway portion of a divided, restricted access highway, excluding, for clarity, the interchange ramps.
- 1.109 “**Maintenance Work**” means any work after Phase 1 Substantial Completion, the Phase 2a Substantial Completion, or the Phase 2b Substantial Completion for maintenance or repair of the Toll System Field Equipment in accordance with the requirements of the Services Agreement, including, without limitation, Preventive Maintenance, Corrective Maintenance, Predictive Maintenance and any other maintenance or repair work to be carried out pursuant to the Services Output Specifications.
- 1.110 “**MEDEI**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, and includes any successors thereto or persons exercising delegated power and the Minister’s authority.
- 1.111 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work), which would not materially impair (i) Owner’s use and enjoyment of the Toll System Field Equipment, or (ii) the performance of the Service Provider Services by Service Provider.
- 1.112 “**Minor Deficiencies List**” has the meaning given in Section 20.5(a) of the Services Agreement.
- 1.113 “**Misconduct**” has the meaning given to such term in Section 1 of Schedule 14.
- 1.114 “**Monitoring Notice**” has the meaning given in Section 26.4(a) of the Services Agreement.
- 1.115 “**Monthly Service Payment**” has the meaning given in Schedule 14 – Payment Mechanism.
- 1.116 “**MSDS**” means the material safety data sheets prescribed by the applicable WHMIS legislation.
- 1.117 “**MTO**” means Her Majesty the Queen in right of Ontario, as represented by the Minister of Transportation, and includes any successors thereto or persons exercising delegated power and the Minister’s authority.
- 1.118 “**Net Incremental Leasing Fees**” has the meaning given to such term in Section 21.7 of the Services Agreement.

- 1.119 “**No Default Interest Rate**” means the rate of interest per annum quoted by the [Redacted] from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.120 “**Non-Resident**” means (i) in respect of a Person that is a corporation, such Person is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada), and (ii) in respect of a Person that is a partnership, such Person is, at the relevant time, not a “Canadian partnership” for the purposes of the *Income Tax Act* (Canada).
- 1.121 “**Notice**” has the meaning given in Section 54.1(a) of the Services Agreement.
- 1.122 “**Notice of Dispute**” has the meaning given in Section 1.3 of Schedule 20 – Dispute Resolution Procedure.
- 1.123 “**Notice to Proceed**” means the notice in writing from Owner to Service Provider requesting Service Provider to commence the Works.
- 1.124 “**Operational Term**” means the period from the Phase 1 Substantial Completion Date, Phase 2a Substantial Completion Date, and Phase 2b Substantial Completion Date, as applicable by the Service Provider Services performed following such dates, until the end of the Project Term.
- 1.125 “**Outline Commissioning Program**” means the outline commissioning program attached as Schedule 9 – Outline Commissioning Program, generally setting out the commissioning activities of Service Provider, including verification of manufacturer equipment testing, installation of critical equipment, testing of systems, integration with reporting and quality assurance program for construction activities.
- 1.126 “**Output Specifications**” means, collectively, the Design and Construction Output Specifications and the Services Output Specifications.
- 1.127 “**Owner**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure as represented by IO.
- 1.128 “**Owner Default Termination Sum**” has the meaning given in Schedule 16 – Compensation on Termination.
- 1.129 “**Owner Deliverables**” means the design and construction specifications and work to be provided by the Owner contained in Schedule 27 – Owner Deliverables.
- 1.130 “**Owner Event of Default**” has the meaning given in Section 40.1(a) of the Services Agreement.
- 1.131 “**Owner Party**” means any of Owner’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees and includes, without limitation,

any Person(s) selected by Owner to construct and maintain Highway 407 East or any Person(s) engaged to carry out the Additional Works, but excludes Service Provider and any Service Provider Party, and the “**Owner Parties**” shall be construed accordingly.

- 1.132 “**Owner Party Design Data**” means all drawings, reports, documents, plans, formulae, calculations, manuals and other data that are provided by the Owner or any Owner Party and that relate to the design, construction, testing, commissioning or operation of Highway 407 East and/or the Toll System Field Equipment (but excluding Intellectual Property rights of third parties, such as CAD software).
- 1.133 “**Owner Party Works Committee**” means the works committee established by the Owner pursuant to a project agreement between the Owner and any Owner Party in respect of the construction of Highway 407 East.
- 1.134 “**Owner Representative**” means the person designated as such by Owner on or prior to the Effective Date and any permitted replacement.
- 1.135 “**Owner Taxes**” means taxes, or payments in lieu of taxes, imposed on Owner and HST and property taxes for which Owner is responsible pursuant to Section 30 of the Services Agreement.
- 1.136 “**Owner Termination Fee**” has the meaning given to such term in Schedule 16 – Compensation on Termination.
- 1.137 “**Owner Trade-Marks**” means any and all Trade-Marks used by Owner in any manner whatsoever.
- 1.138 “**Party**” means either Owner or Service Provider, and “**Parties**” means both Owner and Service Provider.
- 1.139 “**Payment Adjustment Report**” has the meaning given in Section 29.5(i)(ii) of the Services Agreement.
- 1.140 “**Payment Mechanism**” has the meaning given in Schedule 14 – Payment Mechanism.
- 1.141 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by Owner for each Contract Year, provided that the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Phase 1 Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.142 “**Performance Audit**” has the meaning given in Section 23.7(a) of the Services Agreement.

- 1.143 “**Performance Monitoring Report**” means the performance monitoring report contemplated by the Services Output Specifications.
- 1.144 “**Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Service Provider in accordance with the Services Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties (including any Development Approval), needed to perform the Project Operations in accordance with the Services Agreement.
- 1.145 “**Person**” means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.
- 1.146 “**Personal Information**” means all personal information (as the term “**personal information**” is defined in Section 2 of FIPPA) in the possession, custody or control of Service Provider or a Service Provider Party, that Owner discloses, transfers or provides access to Service Provider or a Service Provider Party in connection with the Project Operations (except to the extent that such information is provided in relation to the operation of the 407ETR Tolling System) or that Service Provider or a Service Provider Party otherwise collects, handles or of which it otherwise comes into possession in connection with the Project Operations, other than (1) personal information used by Service Provider or any Service Provider Party in connection with the operation or maintenance of 407ETR, (2) personal information of the employees and consultants of Service Provider or any Service Provider Party, (3) the names and/or contact information of employees and consultants of a Government Entity who are involved in the Project, and (4) personal information that is (i) wholly unrelated to the Project Operations, and (ii) not derived directly or indirectly from Owner in respect of the Project.
- 1.147 “**Phase 1**” means the Project Operations to be provided with respect to Highway 407 East from Brock Road to Harmony Road and linking the east-west portion of Highway 407 East to Highway 401 via Highway 412, as set out in Schedule 2.
- 1.148 “**Phase 2**” means Phase 2a and Phase 2b, collectively.
- 1.149 “**Phase 1 Longstop Date**” has the meaning given in Section 39.1(a)(ii) of the Services Agreement.
- 1.150 “**Phase 1 Payment Commencement Date**” means the day that follows the Phase 1 Substantial Completion Date.
- 1.151 “**Phase 1 Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 20.3 of the Services Agreement.

- 1.152 **“Phase 1 Substantial Completion Date”** means the date on which Phase 1 Substantial Completion is achieved as evidenced by the Phase 1 Substantial Completion Certificate, as such date shall be stated therein.
- 1.153 **“Phase 1 Substantial Completion Notice”** has the meaning given in Section 20.3(b) of the Services Agreement.
- 1.154 **“Phase 1 Substantial Completion Payment”** means the balance of the Phase 1 Target Price, as adjusted herein, after taking into account the payment of all applicable Base Progress Payments.
- 1.155 **“Phase 1 Substantial Completion”** means the point at which the Toll System has been completed in accordance with the Output Specifications, a certificate of substantial performance of the Works is published in accordance with Section 32(1) of the CLA, and all requirements for Phase 1 Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.156 **“Phase 1 Target Price”** has the meaning given to such term in Schedule 25 – Target Price and Base Progress Payments.
- 1.157 **“Phase 2a”** means the Project Operations to be provided with respect to Highway 407 East from Harmony Road to Highway 418 and Highway 418 from the east-west portion of Highway 407 East to Taunton Road, as set out on Schedule 2.
- 1.158 **“Phase 2a Longstop Date”** has the meaning given in Section 39.1(a)(ii) of the Services Agreement.
- 1.159 **“Phase 2a Payment Commencement Date”** means the day that follows the Phase 2a Substantial Completion Date.
- 1.160 **“Phase 2a Substantial Completion”** means the point at which the Toll System has been completed in accordance with the Output Specifications, a certificate of substantial performance of the Works is published in accordance with Section 32(1) of the CLA, and all requirements for Phase 2a Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.161 **“Phase 2a Substantial Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 20.8 of the Services Agreement.
- 1.162 **“Phase 2a Substantial Completion Date”** means the date on which Phase 2a Substantial Completion is achieved as evidenced by the Phase 2a Substantial Completion Certificate, as such date shall be stated therein.
- 1.163 **“Phase 2a Substantial Completion Notice”** has the meaning given in Section 20.3(b) of the Services Agreement.

- 1.164 “**Phase 2 Target Price**” has the meaning given to such term in Schedule 25 – Target Price and Base Progress Payments.
- 1.165 “**Phase 2b**” means the Project Operations to be provided with respect to Highway 407 East from Highway 418 to Highway 35/115 and Highway 418 from Taunton Road to Highway 401, as set out in Schedule 2.
- 1.166 “**Phase 2b Longstop Date**” has the meaning given in Section 39.1(a)(ii) of the Services Agreement.
- 1.167 “**Phase 2b Payment Commencement Date**” means the day that follows the Phase 2b Substantial Completion Date.
- 1.168 “**Phase 2b Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 20.3 of the Services Agreement.
- 1.169 “**Phase 2b Substantial Completion Date**” means the date on which Phase 1 Substantial Completion is achieved as evidenced by the Phase 2b Substantial Completion Certificate, as such date shall be stated therein.
- 1.170 “**Phase 2b Substantial Completion Notice**” has the meaning given in Section 20.3(b) of the Services Agreement.
- 1.171 “**Phase 2b Substantial Completion Payment**” means the balance of the Phase 2b Target Price, as adjusted herein, after taking into account the payment of all applicable Base Progress Payments.
- 1.172 “**Phase 2b Substantial Completion**” means the point at which the Toll System has been completed in accordance with the Output Specifications, a certificate of substantial performance of the Works is published in accordance with Section 32(1) of the CLA, and all requirements for Phase 2b Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.173 “**PI Vendors**” has the meaning given to such term in Section 46.1 of the Services Agreement.
- 1.174 “**Predictive Maintenance**” means systems and equipment maintenance of the Toll System Field Equipment based on measuring the condition of systems and equipment to assess whether it is likely to fail during a future period and taking appropriate maintenance or repair action to avoid the likelihood of the failure. The condition of the equipment may be monitored by system and equipment performance.
- 1.175 “**Preventive Maintenance**” means any planned maintenance activity undertaken in an effort to prevent or otherwise reduce the likelihood of system, equipment, building breakdown or failure of the Toll System Field Equipment to achieve acceptable levels in order to achieve expected design or service life and that will provide reliable

functionality within the defined performance parameters. Planned maintenance is scheduled at a fixed time interval, regardless of the condition of the system or equipment at the time.

1.176 “**Preventive Maintenance Plan**” means the plan to be prepared by or on behalf of Service Provider for the maintenance of the Toll System Field Equipment in accordance with the Services Output Specifications and the Services Agreement during each Contract Year.

1.177 “**Prohibited Act**” has the meaning given in Section 53.1(a) of the Services Agreement.

1.178 “**Project**” has the meaning given in the recitals to the Services Agreement.

1.179 “**Project Agreement**” means any agreement between Owner and any Owner Party in respect of Highway 407 East Construction.

1.180 “**Project Data**” means:

- (a) all data, information, usage, billings and collections collected in respect of users of Highway 407 East;
- (b) all Owner Party Design Data;
- (c) all operation and maintenance manuals contemplated by Section 20.4 of the Services Agreement;
- (d) all As Built Drawings relating to the provision of the Toll System Field Equipment; and
- (e) any other materials, documents and or data acquired, brought into existence or used in relation to the Toll System Field Equipment and owned by Owner,

other than the Existing Service Provider IP, the Jointly Developed Materials, the Background Information and the Intellectual Property of third parties (other than Service Provider), such as CAD software.

1.181 “**Project Know-How**” means all ideas, concepts, alternatives, processes, recommendations and suggestions developed by or through Service Provider and revealed to or discovered by Owner, whether before or after the Effective Date, which may be connected in any way to:

- (a) the Works, including the design and construction of the Toll System Field Equipment;
- (b) the Service Provider Services, including the operation, maintenance, improvement and testing of the Toll System Field Equipment;

- (c) any other Project Operations; or
- (d) the Services Agreement.

1.182 “**Project Operations**” means:

- (a) the performance of the Works;
- (b) the delivery of the Service Provider Services; and
- (c) the performance of all other obligations of Service Provider under the Services Agreement.

1.183 “**Project Term**” has the meaning given in Section 2.1(a) of the Services Agreement.

1.184 “**Proposed Change**” has the meaning given to such term in Section 52.4 of the Services Agreement.

1.185 “**Proprietor**” has the meaning given in Section 45.6(a) of the Services Agreement.

1.186 “**Province**” or “**Crown**” means Her Majesty the Queen in Right of Ontario.

1.187 “**Recoverable Tax**” has the meaning given to such term in Section 30.4 of the Services Agreement.

1.188 “**Recovery Amount**” has the meaning given in Section 49.3(g) of the Services Agreement.

1.189 “**Reimbursement Event**” has the meaning given in Section 27.5(a) of the Services Agreement.

1.190 “**Relevant Change in Law**” means a Discriminatory Change in Law, a Specific Change in Law or a Relevant Works Change in Law.

1.191 “**Relevant Works Change in Law**” means a change in the Building Code in force as at the Effective Date that requires Service Provider to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Toll System Field Equipment which is not Maintenance Work or capital replacement work which Service Provider would otherwise be required to perform in order to comply with its obligations under the Services Agreement.

1.192 “**Relief Event**” has the meaning given in Section 37.1(a) or Section 37.1(b), as applicable, of the Services Agreement.

1.193 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada for reasons other than its trade or economic policies;
 - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
 - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
 - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
 - (e) is subject to a material claim of Owner or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Owner’s view, in either case, be reasonably likely materially to affect the ability of Service Provider to perform its obligations under the Services Agreement; or
 - (f) has a material interest in the production of tobacco products.
- 1.194 “**Roadside Toll Collection**” has the meaning given to such term in Section 2 of Schedule 4.
- 1.195 “**Safety Plan**” means the safety plan prepared by Service Provider in respect of the Project Operations and submitted to Owner prior to the commencement of construction of the Toll System Field Equipment and annually thereafter.
- 1.196 “**Schedule**” means a schedule to the Services Agreement.
- 1.197 “**Scheduled Final Phase 1 Completion Date**” means the last date for the completion of Minor Deficiencies pursuant to the Minor Deficiencies List related to Phase 1 of the Highway 407 East.
- 1.198 “**Scheduled Final Phase 2a Completion Date**” means the last date for the completion of Minor Deficiencies pursuant to the Minor Deficiencies List related to Phase 2a of the Highway 407 East.

- 1.199 “**Scheduled Final Phase 2b Completion Date**” means the last date for the completion of Minor Deficiencies pursuant to the Minor Deficiencies List related to Phase 2b of the Highway 407 East.
- 1.200 “**Scheduled Phase 1 Substantial Completion Date**” means December 31, 2015, as such date may be extended pursuant to Section 34 of the Services Agreement.
- 1.201 “**Scheduled Phase 2a Substantial Completion Date**” means December 31, 2017, as such date may be extended pursuant to Section 34 of the Services Agreement.
- 1.202 “**Scheduled Phase 2b Substantial Completion Date**” means December 31, 2019, as such date may be extended pursuant to Section 34 of the Services Agreement.
- 1.203 “**Segregated Account**” has the meaning given to such term in Section 55.19 of the Services Agreement.
- 1.204 “**Segregated Funds**” has the meaning given to such term in Section 55.19 of the Services Agreement.
- 1.205 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Service Provider or any Service Provider Party, give that competitor a competitive advantage over Service Provider or such Service Provider Party and thereby prejudice the business of Service Provider or such Service Provider Party.
- 1.206 “**Service Failure**” has the meaning given in Schedule 14 – Payment Mechanism.
- 1.207 “**Service Failure Points**” has the meaning given in Schedule 14 – Payment Mechanism.
- 1.208 “**Service Provider**” means Canadian Tolling Company International Inc.
- 1.209 “**Service Provider Commissioning**” means the commissioning activities to be carried out by Service Provider prior to the issuance of the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, and the Phase 2b Substantial Completion Certificate, as applicable, in accordance with the Final Commissioning Program.
- 1.210 “**Service Provider Commissioning Tests**” means the Commissioning Tests to be carried out by Service Provider to the satisfaction of Owner, acting reasonably, prior to the issuance of the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, and the Phase 2b Substantial Completion Certificate, as applicable, in accordance with the Final Commissioning Program.
- 1.211 “**Service Provider Default Letter of Credit**” has the meaning given in Schedule 18 – Insurance Requirements.

- 1.212 “**Service Provider Equipment**” means all software, licences, fixtures, furnishings and equipment required to be used by Service Provider to provide the Service Provider Services during the Project Term.
- 1.213 “**Service Provider Event of Default**” has the meaning given in Section 39.1(a) of the Services Agreement.
- 1.214 “**Service Provider Party**” means:
- (a) 407 ETR Limited;
 - (b) any Person engaged by Service Provider from time to time as may be permitted by the Services Agreement to procure or manage the provision of the Project Operations (or any of them); and
 - (c) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Service Provider Parties**” shall be construed accordingly. For clarity, “**Service Provider Party**” as defined in part (b) of the above definition will not include a Person: (i) providing services to Service Provider or (ii) providing tangible or intangible property to Service Provider not directly related to the Project Operations.
- 1.215 “**Service Provider Representative**” means the person designated as such by Service Provider on or prior to the Effective Date and any permitted replacement.
- 1.216 “**Service Provider Services**” means the services to be performed by Service Provider as set out in the Service Output Specifications, as such services may from time to time be varied in accordance with the Services Agreement.
- 1.217 “**Service Quality Plan**” means such plan to be developed pursuant to the Services Output Specifications.
- 1.218 “**Services Agreement**” has the meaning given in the recitals to the Services Agreement.
- 1.219 “**Services Output Specifications**” means the output specifications contained in Part B of Schedule 28 – Output Specifications.
- 1.220 “**Site**” means such areas of Highway 407 East reasonably necessary to perform the Project Operations and as may be restricted pursuant to the Output Specifications or as may be designated by Owner from time to time for performance of the Project Operations.
- 1.221 “**Small Works**” means any works, including systems, facilities and equipment, of a minor nature that are requested by Owner to be performed having an individual cost or aggregate cost with other linked works, including systems, facilities and equipment, of a minor nature, not exceeding \$[Redacted] (index linked), or as otherwise agreed

from time to time, but excluding any works, including systems, facilities and equipment which will increase the cost to Service Provider of performing the Project Operations or will materially hinder Service Provider in the performance of the Service Provider Services.

- 1.222 “**Sole Discretion**” has the meaning given in Section 1.1(e) of the Services Agreement.
- 1.223 “**Specific Change in Law**” means (i) any Change in Law that principally affects, or principally relates only to, the construction or operation of tolled highways in the Province or (ii) the coming into force of enabling legislation, the content and form of such legislation being entirely within the discretion of the Legislature, which permits the Service Provider to perform Service Provider Services, to the extent such legislation and regulations, or amendments thereafter, differ materially from the *Highway 407 Act, 1998* (Ontario) and regulations as amended.
- 1.224 “**Subcontractor**” means any Service Provider Party that has entered into a Subcontract with Service Provider or other Subcontractor to perform any of the Project Operations.
- 1.225 “**Subcontracts**” means the contracts entered into by or between Service Provider and any Subcontractor or between any Subcontractor at any tier and any other Subcontractor at any tier to perform any of the Project Operations.
- 1.226 “**Submittal Schedule**” has the meaning given to it in Schedule 8 – Review Procedure.
- 1.227 “**Supplier**” means a person who supplies to Service Provider, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.228 “**System Development Costs**” has the meaning given in Schedule 16 – Compensation on Termination.
- 1.229 “**Target Price**” has the meaning given in Schedule 25 – Target Price and Base Progress Payments.
- 1.230 “**Target Price Reduction Incentive**” has the meaning given in Schedule 25 – Target Price and Base Progress Payments.
- 1.231 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “Taxes” shall not include the Owner Taxes.
- 1.232 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Services Agreement takes effect in accordance with its terms.

- 1.233 “**Third Party Beneficiaries**” has the meaning given in Section 55.17(a) of the Services Agreement.
- 1.234 “**Title Encumbrances**” means the Encumbrances listed in Schedule 10 – Title Encumbrances and any other Encumbrance consented to by Owner and reasonably required in connection with the development of the Toll System Field Equipment and the Project Operations.
- 1.235 “**Toll Rates**” have the meaning given in Schedule 28 – Output Specifications – Part B – Services Output Specifications.
- 1.236 “**Toll Revenues**” means the revenues from the application of Toll Rates to users of Highway 407 East.
- 1.237 “**Toll System**” means:
- (a) all modifications to the 407ETR Tolling System;
 - (b) all Toll System Field Equipment;
 - (c) all buildings, facilities and other structures provided by Owner;
 - (d) all site services, utilities and roadways required to support such buildings, facilities and structures provided by Owner; and
 - (e) all supporting systems, infrastructure and improvements provided by Owner,
- required to meet the Output Specifications and whether or not in the course of construction, installation or completion, but excludes such Tolling Infrastructure Works for which the Service Provider is not responsible under this Services Agreement.
- 1.238 “**Toll System Field Equipment**” means all equipment procured, designed or constructed and installed on the Site for the Owner by the Service Provider to provide the Project Operations and includes, without limitation, the equipment listed as Toll System Field Equipment in the Design and Construction Output Specifications, all of which will be procured by Service Provider and installed on the Site during the Project Term and, for greater certainty, excludes the 407ETR Tolling System and Service Provider Equipment.
- 1.239 “**Toll System Management Committee**” has the meaning given in Section 10.1(a) of the Services Agreement.
- 1.240 “**Toll System Visitor**” has the meaning given to such term in Section 49.1 of the Services Agreement.
- 1.241 “**Tolling Infrastructure Specifications**” means: **[Redacted]**

- 1.242 “**Tolling Infrastructure Works**” has the meaning given in Section 8.5(a) of the Services Agreement.
- 1.243 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, official mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.244 “**User Fee Protocol**” means the policies and procedures set out in Schedule 26 – User Fee Protocol.
- 1.245 “**User Fee Revenues (407ETR)**” means the revenues from the application of User Fees (407ETR) to users of 407ETR and, for greater certainty, excludes the Toll Revenues.
- 1.246 “**User Fee Revenues (Highway 407 East)**” means the revenues from the application of User Fees (Highway 407 East) to users of Highway 407 East and, for greater certainty, excludes the Toll Revenues.
- 1.247 “**User Fees (407ETR)**” means the fees, charges and interest payable by users of 407ETR as set out in Schedule 26 – User Fee Protocol.
- 1.248 “**User Fees (Highway 407 East)**” means the fees, charges and interest payable by users of Highway 407 East as set out in Schedule 26 – User Fee Protocol and as may be managed by the Owner from time to time pursuant to Section 21.3.
- 1.249 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.250 “**Utility Company**” means any company or companies designated by Owner to provide Utilities.
- 1.251 “**Variation**” has the meaning given in Schedule 15 – Variation Procedure.
- 1.252 “**Variation Confirmation**” has the meaning given in Schedule 15 – Variation Procedure.
- 1.253 “**Variation Enquiry**” has the meaning given in Schedule 15 – Variation Procedure.
- 1.254 “**Variation Procedure**” means the procedure set out in Schedule 15 – Variation Procedure.
- 1.255 “**Warning Notice**” has the meaning given in Section 26.3(a) of the Services Agreement.
- 1.256 “**WHMIS**” means the system for the labeling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.

1.257 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Toll System Field Equipment, including rectification of any Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Service Provider Services, other than the Owner Commissioning.

1.258 “**Works Change in Law**” means any Change in Law that:

- (a) is not a Relevant Change in Law;
- (b) occurs after the Phase 2b Substantial Completion Date;
- (c) requires Service Provider to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Toll System which is not Maintenance Work or capital replacement work which Service Provider would otherwise be required to perform in order to comply with its obligations under the Services Agreement; and
- (d) was not reasonably foreseeable at the Effective Date by an experienced contractor carrying out activities and/or performing design and/or other operations in respect of the Toll System similar to those to be carried out and/or performed by any Service Provider Party in relation to the Project.

1.259 “**Works Report**” means a report provided by Service Provider as to the status and progress of the Works.

1.260 “**Works Schedule**” has the meaning given in Schedule 11 – Works Schedule.

2. **Interpretation.** The Services Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

2.1 The tables of contents, headings, marginal notes and references to them in the Services Agreement are for convenience of reference only, shall not constitute a part of the Services Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Services Agreement.

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 Services Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Services Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Services Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.

2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Services Agreement followed by a number are references to the whole of the Section, Clause, Paragraph,

Subparagraphs, Schedule or other division of the Services Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.

- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 28 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Services Agreement are an integral part of the Services Agreement and a reference to the Services Agreement includes a reference to the Schedules.
- 2.6 All references in the Services Agreement to a Schedule shall be to a Schedule of the Services Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1 – Definitions and Interpretation, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Services Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Service Provider and shall be construed and interpreted as if the words “Service Provider shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Services Agreement, all accounting and financial terms used in the Services Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Services Agreement concerning

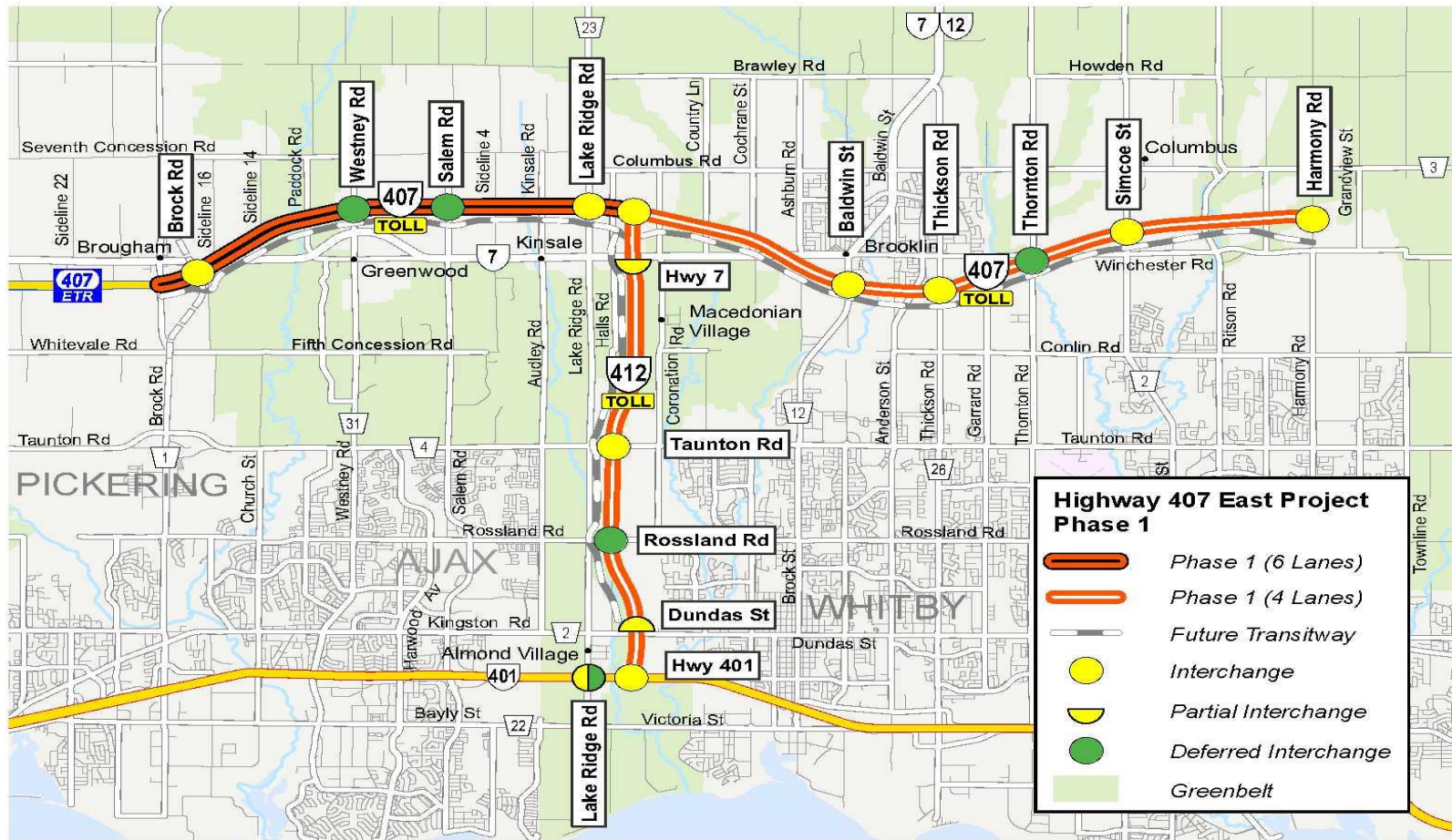
- amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. 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.
- 2.16 A reference in the Services Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of Owner, any Owner Party or other Government Entity shall be construed having regard to the interactive nature of the activities of Owner, the Owner Parties and Service Provider and further having regard to:
- 2.18 acts contemplated by the Output Specifications;
- 2.19 acts or omissions in the ordinary course of the Service Provider Services and expressly or properly inferred from the Output Specifications to be taken into account by Service Provider in the performance of the Service Provider Services; or
- 2.20 acts otherwise provided for in the Services Agreement.
- 2.21 The words in the Services Agreement shall bear their natural meaning.
- 2.22 Each of Service Provider's and Owner's respective obligations shall be construed as separate obligations owed to the other.
- 2.23 References containing terms such as:
- 2.24 "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Services Agreement taken as a whole; and

- 2.25 “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- 2.26 In construing the Services Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach apply to the construction of the Services Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.27 Where the Services Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.28 Where the Services Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.29 Where the Services Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.30 Any reference to time of day or date means the local time or date in Toronto, Ontario.
- 2.31 Unless otherwise indicated, time periods will be strictly construed.
- 2.32 Whenever the terms “will” or “shall” are used in the Services Agreement in relation to Service Provider or Owner they shall be construed and interpreted as synonymous and to read “Service Provider shall” or “Owner shall” as the case may be.
- 2.33 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.34 Unless otherwise identified in the Services Agreement, all units of measurement in any documents submitted by Service Provider to Owner shall be in accordance with the SI system of units.
- 2.35 Terms not defined herein and used in the Services Agreement which have a technical meaning commonly understood by the information technology sector in Ontario will be construed as having that meaning unless the context otherwise requires.

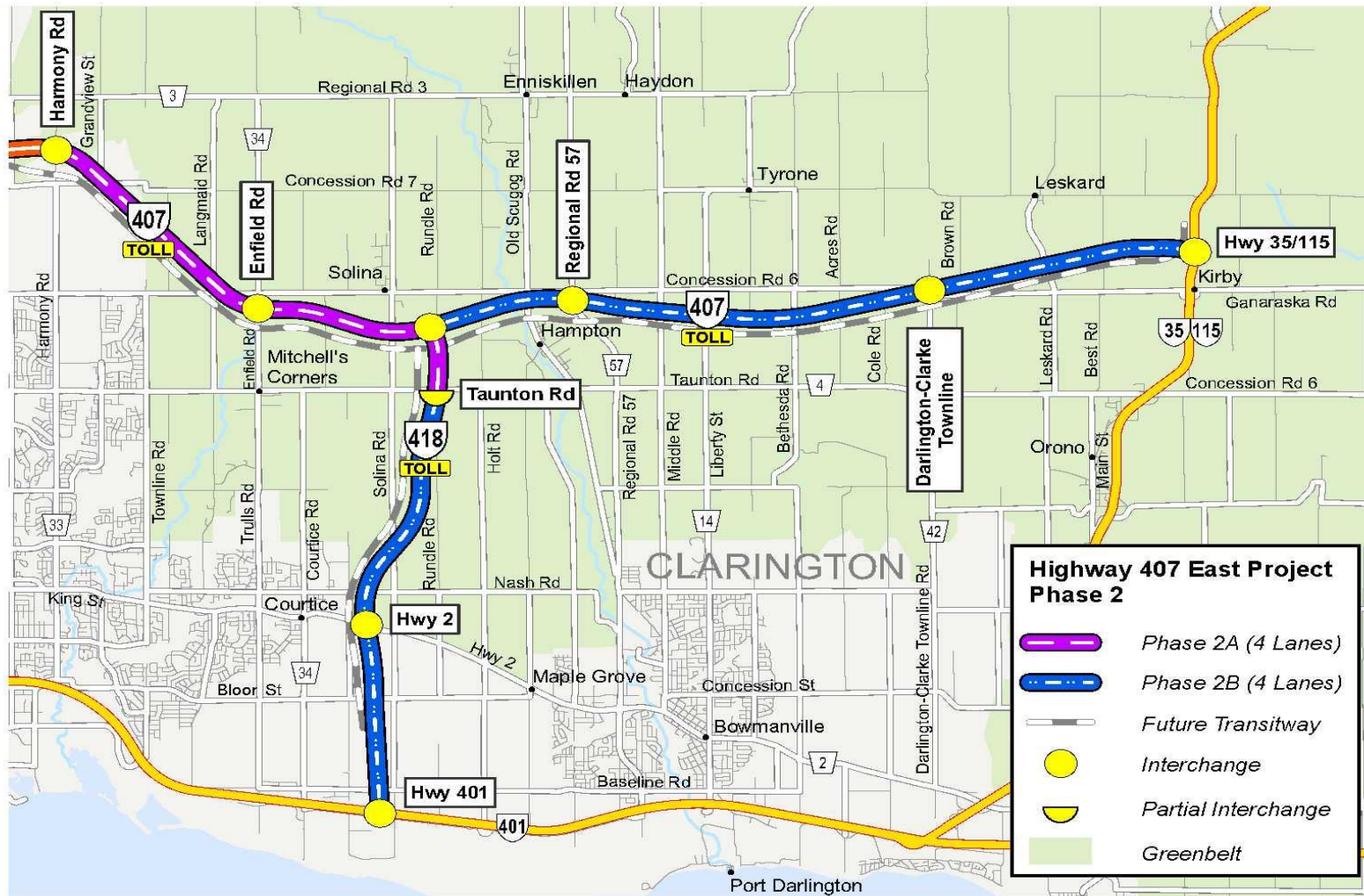
2.36 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_y}{\text{CPI}_o}$$

Schedule 2
407 EAST MAPS



407 East



SCHEDULE 3
SERVICE PROVIDER PARTY INFORMATION

[Redacted]

**SCHEDULE 4
TOLLING INFRASTRUCTURE WORKS**

[Redacted]

SCHEDULE 5

[RESERVED]

**SCHEDULE 6
INDEPENDENT CERTIFIER AGREEMENT**

407 East

Services Agreement - Schedule 6
Execution Version

Schedule 6

INDEPENDENT CERTIFIER AGREEMENT

THIS AGREEMENT is made as of the 13th day of July, 2012

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, as represented by the Minister of Infrastructure, as represented by the Ontario Infrastructure and Lands Corporation, a non-share capital corporation amalgamated and continued under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32

("Owner")

AND:

CANADIAN TOLLING COMPANY INTERNATIONAL INC., a corporation existing under the laws of Canada

("Service Provider")

AND:

ALTUS GROUP LIMITED, a corporation incorporated under the laws of Ontario

(the "Independent Certifier")

WHEREAS:

- A. Owner and Service Provider have entered into the Services Agreement.
- B. Pursuant to the terms of the Services Agreement, the SA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Services Agreement.
- C. The SA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

NOW THEREFORE in consideration of the mutual covenants and agreements of the SA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the SA Parties and the Independent Certifier covenant and agree as follows:

407 East

Services Agreement - Schedule 6
Execution Version**1. DEFINITIONS****1.1 Definitions**

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Services Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Services Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
- (A) all of the functions and obligations described in the Services Agreement as being the responsibility of the Independent Certifier;
 - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
 - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
- (ii) **“Certification Services Variation”** is any change to the Certification Services.
- (iii) **“Contract Material”** means all material:
- (A) provided to the Independent Certifier or created or required to be created by either SA Party; and
 - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,
- including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
- (iv) **“Fee”** means the fees payable by Owner and Service Provider to the Independent Certifier for the Certification Services, as such fees are specified and made payable in Appendix B to this Independent Certifier Agreement.
- (v) **“Intellectual Property”** means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

407 East**Services Agreement - Schedule 6
Execution Version**

- (vi) “SA Parties” means both Owner and Service Provider, and “SA Party” means either Owner or Service Provider, as the context requires.
- (vii) “Services Agreement” means that certain Services Agreement made on or about the date hereof between Owner and Service Provider with respect to the design, construction and back office services in respect of the Project.

2. INTERPRETATION**2.1 Interpretation**

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
 - (i) words denoting the singular number include the plural and vice versa;
 - (ii) words denoting individuals include corporations and vice versa;
 - (iii) headings are for convenience only and do not affect interpretation;
 - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
 - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
 - (vii) words denoting any gender include all genders;
 - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
 - (ix) a reference to “\$” is to Canadian currency;
 - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
 - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
 - (xii) unless otherwise indicated, all time periods will be strictly construed.

407 East

Services Agreement - Schedule 6
Execution Version**2.2 Obligations and Exercise of Rights by SA Parties**

- (a) The obligations of the SA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Services Agreement, the rights of the SA Parties under this Independent Certifier Agreement shall be jointly exercised by the SA Parties.

3. ROLE OF THE INDEPENDENT CERTIFIER**3.1 Engagement**

- (a) The SA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither SA Party shall, without the prior written consent of the other SA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Service Provider shall ensure that no Service Provider Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Service Provider of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Schedule 6.

3.2 Acknowledgement of Independent Certifier

- (a) The Independent Certifier hereby acknowledges in favour of the SA Parties that it has received a copy of the Services Agreement.

3.3 Standard of Care

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

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- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both SA Parties in accordance with the terms of the Services Agreement and this Independent Certifier Agreement;
 - (ii) act reasonably and professionally;
 - (iii) act in a timely manner:
 - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Services Agreement; or
 - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the SA Parties to perform their respective obligations under the Services Agreement; and
 - (iv) act in accordance with the joint directions of the SA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Services Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the SA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the SA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

3.5 Authority to Act

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either SA Party;
 - (ii) other than as expressly set out in this Independent Certifier Agreement or the Services Agreement, has no authority to give any directions to a SA Party or its officers, directors, members, employees, contractors, consultants or agents; and

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- (iii) has no authority to waive or alter any terms of the Services Agreement, nor to discharge or release a party from any of its obligations under the Services Agreement unless jointly agreed by the SA Parties in writing.

3.6 Knowledge of the SA Parties' Requirements**(a) The Independent Certifier warrants that:**

- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Services Agreement;
- (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
- (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Services Agreement and this Independent Certifier Agreement;
- (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to the Toll System Field Equipment and Site including restrictions on any such access or protocols that are required; and
- (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

3.7 Co-ordination and Information by Independent Certifier**(a) The Independent Certifier must:**

- (i) fully cooperate with the SA Parties;
- (ii) carefully co-ordinate the Certification Services with the work and services performed by the SA Parties;
- (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the SA Parties; and
- (iv) provide copies to the SA Parties of all reports, communications, certificates and other documentation that it provides to either SA Party.

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3.8 Conflict of Interest

- (a) The Independent Certifier warrants that:
- (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as an advisor to either of the SA Parties or any of their respective related entities in respect of the Services Agreement (including, but not limited to, acting as a transaction advisor to either SA Party); and
 - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the SA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the SA Parties to avoid or mitigate that conflict or risk.

3.9 Independent Certifier Personnel

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the SA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:
- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, The Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
 - (ii) have demonstrated competence in the commissioning of toll systems and back office services;
 - (iii) have an understanding of the appropriate CSA standards, commissioning for toll systems and back office services as well as other applicable standards such as ASHRAE and NACBB; and
 - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Agreement and the Services Agreement, including not only the start-up procedures but also the pre-commissioning and post-commissioning activities.

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The Independent Certifier shall furnish the SA Parties with evidence satisfactory to the SA Parties of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

3.10 Minimize Interference

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

4. ROLE OF THE SA PARTIES**4.1 Assistance**

- (a) The SA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

4.2 Instructions in Writing

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Services Agreement, all instructions to the Independent Certifier by the SA Parties shall be given in writing and accepted or endorsed by both of the SA Parties.

4.3 Information and Services

- (a) Subject to third party intellectual property rights and confidentiality obligations, the SA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

4.4 Additional Information

- (a) Subject to third party intellectual property rights and confidentiality obligations, if any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the SA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Service Provider Representative or the Owner Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and

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- (ii) Service Provider or Owner, as the case may be, must arrange the provision of the required information, documents or particulars.

4.5 Right to Enter and Inspect

- (a) Upon giving reasonable notice to the Service Provider Representative, the Independent Certifier may enter and inspect the Site, Toll System Field Equipment or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
 - (i) observance of the reasonable rules of Service Provider as to safety and security for the Site, the Toll System Field Equipment and the Works;
 - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Toll System Field Equipment and the Works; and
 - (iii) not causing any damage to the Site, the Toll System Field Equipment or the Works.

4.6 SA Parties Not Relieved

- (a) Neither SA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Services Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

4.7 SA Parties not Liable

- (a) On no account will a SA Party be liable to another SA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Services Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either SA Party against or any obligation or liability of either SA Party to the other SA Party which would have existed regardless of such act or omission.

5. CERTIFICATION QUALITY PLAN**5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
 - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Owner Representative and the Service Provider Representative;
 - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the Owner Representative and the Service Provider Representative;

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- (iii) if satisfactory to each of the Owner Representative and the Service Provider Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the Owner Representative and the Service Provider Representative, within 7 days after receiving notice thereof from either SA Party to that effect, revise and resubmit the certification quality plan to each of the Owner Representative and the Service Provider Representative, and implement it if satisfactory to each of the Owner Representative and the Service Provider Representative.

5.2 Certification Quality Plan not to Relieve Independent Certifier

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
 - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
 - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the Owner Representative or the Service Provider Representative.

6. SUSPENSION**6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the SA Parties:
 - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the SA Parties giving joint notice in writing to the Independent Certifier; or
 - (ii) in any other case, by the SA Parties giving 7 days joint notice in writing to the Independent Certifier.

6.2 Costs of Suspension

- (a) The Independent Certifier will:

- (i)

- (ii)

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- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the SA Parties requiring it to do so.

7. INSURANCE AND LIABILITY**7.1 Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
- (i) professional liability insurance:
 - (A) in the amount of \$██████████ per claim and \$██████████ in the aggregate, a deductible of not more than \$██████████ per claim and from an insurer and on terms satisfactory to each of the SA Parties; and
 - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the SA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
 - (ii) comprehensive general liability insurance in the amount of \$██████████ per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$██████████ per occurrence for property damage and from an insurer and on terms satisfactory to each of the SA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the SA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the SA Parties, acting reasonably.

7.2 Workers' Compensation Insurance

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

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- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each SA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each SA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither SA Party shall have any liability in respect of the non-payment by the other SA Party of any fees or costs payable by such other SA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit to perform the Certification Services.
- (d) The SA Parties acknowledge and agree that if any approved amount due and payable by the SA Parties to the Independent Certifier in excess of \$ [REDACTED] is outstanding for more than [REDACTED], the Independent Certifier shall not have any obligation to make any certification under the Services Agreement.

9. CERTIFICATION SERVICES VARIATIONS**9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a "Certification Services Variation Order" under Section 9.4(c), that any direction by the SA Parties constitutes or involves a Certification Services Variation it must:
 - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the SA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
 - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Owner Representative and the Service Provider Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

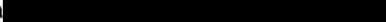
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9.2 No Adjustment

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

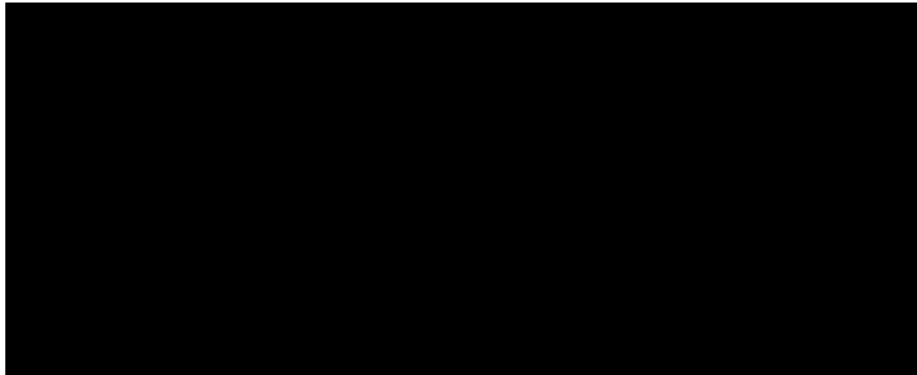
9.3 External Services

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then 

9.4 Certification Services Variation Procedure

- (a) The Owner Representative and the Service Provider Representative may jointly issue a document titled "Certification Services Variation Price Request" to the Independent Certifier which will set out details of a proposed Certification Services Variation which the SA Parties are considering.
- (b) Within 7 days after the receipt of a "Certification Services Variation Price Request", the Independent Certifier must provide each of the Owner Representative and the Service Provider Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the Owner Representative and the Service Provider Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled "Certification Services Variation Order" which will state either that:
 - (i) the Fee is adjusted as set out in the Independent Certifier's notice; or
 - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

9.5 Cost of Certification Services Variation



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- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Services Agreement and continue in full force until:
- (i) the Final Completion Date; or
 - (ii) such other date as may be mutually agreed between the SA Parties and the Independent Certifier.

10.2 Notice of Breach

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the SA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
 - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

10.3 Termination for Breach

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the SA Parties may, without prejudice to any other rights of the SA Parties or either of them, immediately terminate this Independent Certifier Agreement.

10.4 Termination for Financial Difficulty or Change in Control

- (a) The SA Parties may, without prejudice to any other rights which the SA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the SA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
 - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

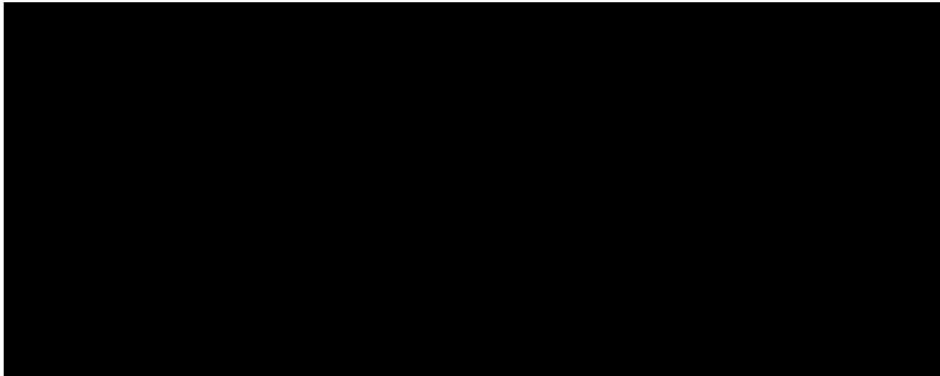
10.5 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the SA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon

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30 days written notice to the Independent Certifier. The SA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

10.6 Independent Certifier's Rights upon Termination for Convenience**10.7 Procedure upon Termination**

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
- (i) cooperate with the SA Parties with respect to the transition of the Certification Services to a replacement certifier;
 - (ii) deliver to the SA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
 - (iii) as and when required by the SA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the SA Parties to execute the Project or the persons nominated to provide the Certification Services.

10.8 Effect of Termination

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the SA Parties to recover damages from the Independent Certifier).

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10.9 Survival

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the SA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

11. INDEMNITY**11.1 SA Parties to Save Independent Certifier Harmless**

- (a) The SA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the SA Parties, as referred to in Section 11.2);
 - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
 - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

11.2 Independent Certifier to Save SA Parties Harmless

- (a) The Independent Certifier hereby indemnifies and saves the SA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.

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- (b) The indemnity provided under this Section 11.2 to a SA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such SA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such SA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
 - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such SA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

12. GENERAL

12.1 Entire Agreement

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

12.2 Negation of Employment

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the SA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

12.3 Waiver

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any 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.

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12.4 Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Independent Certifier Agreement shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Independent Certifier Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Owner:

Ontario Infrastructure and Lands Corporation
777 Bay Street
9th Floor
Toronto, Ontario M5G 2C8
Fax No.: [REDACTED]
Attn: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation
1 Dundas Street West
20th Floor
Toronto, Ontario M5G 2L5
Fax No.: [REDACTED]
Attn: [REDACTED]

- and -

Ministry of Transportation
Provincial Highways Management Division
Assistant Deputy Minister's Office
77 Wellesley Street West
3rd Floor Ferguson Block
Toronto, Ontario M7A 1Z8
Fax: 416-327-9226

If to Service Provider:

Canadian Tolling Company International Inc.
6300 Steeles Avenue West
Woodbridge, Ontario L4H 1J1
Fax No.: [REDACTED]
Attn: [REDACTED]

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If to Independent Certifier:

5 Altus Group Limited
33 Yonge Street, Suite 500
Toronto, Ontario M5E 1G4
Attn: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) 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 transmission in accordance with this Section 12.4.
- (f) 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 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) 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.

12.5 Transfer and Assignment

- (a) The Independent Certifier:
- (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of

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the SA Parties, which each SA Party may give or withhold in its absolute discretion; and

- (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the SA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Services Agreement.

12.6 Governing Laws and Jurisdictions

- (a) This Independent Certifier Agreement 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.
- (b) The SA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and, subject to the *Proceedings Against the Crown Act* (Ontario), hereby irrevocably attorn to the exclusive jurisdiction of such courts.

12.7 Confidentiality

- (a) The Independent Certifier must ensure that:
 - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the SA Parties; and
 - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The SA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the SA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

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- (a) The SA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either SA Party.
- (b) As between the SA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the SA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the SA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The SA Parties acknowledge and agree that as between the SA Parties, title, ownership and other rights to the foregoing shall be governed by the Services Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the SA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

12.9 Amendment

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the SA Parties and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

12.10 Severability

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Independent Certifier Agreement. If any such provision of this Independent Certifier Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Independent Certifier Agreement as near as possible to its original intent and effect.

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- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

12.12 Counterparts

- (a) This Independent Certifier Agreement 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 such party an original signed copy of this Independent Certifier Agreement which was so faxed.

[EXECUTION PAGES IMMEDIATELY FOLLOW]

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IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

~~HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO~~ as represented by the Minister of Infrastructure, as represented by Ontario Infrastructure and Lands Corporation

Per:



Per: _____

Name:

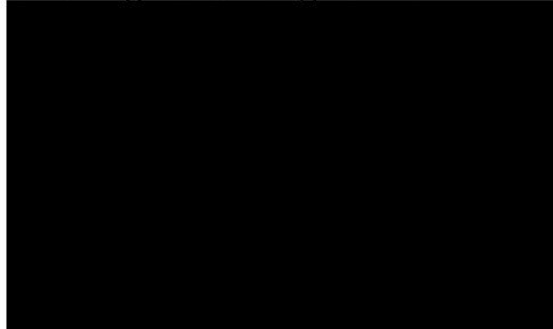
Title:

[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]

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CANADIAN TOLLING COMPANY
INTERNATIONAL INC.



[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]

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ALTUS GROUP LIMITED



[EXECUTION PAGE FOR INDEPENDENT CERTIFIER AGREEMENT]

Proprietary and Confidential

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Without limiting the other provisions of this Independent Certifier Agreement and the Services Agreement, the Independent Certifier shall provide the following:

- (a) Subject to third party intellectual property rights and confidentiality obligations, receive and monitor drawings and documents related to the development of the design of the Toll System Field Equipment as necessary for the Independent Certifier to be informed as to the progress of the Project Operations.
- (b) Subject to third party intellectual property rights and confidentiality obligations, receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Project Operations.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, Service Provider Variation Notices, Variations, Estimates, claims for extension of time and compensation and consult with the relevant party.
- (e) In accordance with Section 10.1(b) of the Services Agreement, attend meetings and participate, as necessary, in the activities of the Toll System Management Committee.
- (f) Review the draft test cases and test methodology and expected test results proposed by Service Provider and provide comments, including to report on the effectiveness of the test cases, to identify any errors or omissions, and to report any risks in respect to meeting the Output Specifications.
- (g) Review the testing to ensure compliance, including re-tests, to be performed as set out in the test cases and the Services Agreement or as otherwise required for Service Provider to achieve acceptance and reach the Final Completion Date.
- (h) Monitor and audit the progress and results of all Service Provider testing and testing conducted by Owner.
- (i) After the notice of readiness for go live has been issued, monitor and audit the delivered solution against the acceptance criteria until the issuance of the applicable certificate.
- (j) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Service Provider and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
- (k) Monitor the Commissioning Tests (as indicatively described in Schedule 9 – Outline Commissioning Program to the Services Agreement) and other tests, including re-tests, to

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be performed as set out in the Final Commissioning Program or as otherwise required for Service Provider to achieve Substantial Completion and Final Completion.

- (l) Prior to any certification, consider the views and comments of both Service Provider and Owner in relation to the satisfaction of the conditions for certification.
- (m) Conduct inspections of the Toll System Field Equipment as necessary for the Independent Certifier to be satisfied that the Project Operations are proceeding in accordance with the requirements of the Services Agreement.
- (n) Review relevant documentation, including certificates and approvals, Permits, Licences, Approvals, and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Services Agreement.
- (o) Monitor the requirements, progress and results of all Service Provider Commissioning and Final Commissioning.
- (p) Monitor the conduct of the Commissioning Tests during the performance testing prescribed in Schedule 9 – Outline Commissioning Program of the Services Agreement, the Final Commissioning Program including, without limitation, any re-tests, review of Commissioning Tests and results, copies of any certificates or other Permits, Licences, Approvals and Agreements received by Service Provider in connection with any Commissioning Tests conducted during the performance testing, review and accepting performance testing forms required to be delivered pursuant to Schedule 9 – Outline Commissioning Program of the Services Agreement, the Final Commissioning Program and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to commissioning of the Toll System Field Equipment after Substantial Completion, as applicable, as either party may request and to report to each of the parties thereon.
- (q) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (l) above and advise Service Provider and Owner with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware.
- (r) Upon receipt of notice from Service Provider requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Services Agreement and in accordance with the Services Agreement, either:
 - (i) issue the applicable certificate; or
 - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.

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- (s) Upon notice from Service Provider that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Project Operations or re-consider the matters specified to be performed, and repeat the procedures in Section (l) of this Appendix A until the issuance of the applicable certificate.
- (t) Prepare, in consultation with Service Provider and Owner, as soon as reasonably practicable and, in any event within, the time period specified in Section 20.5(a) of the Services Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (u) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (together in this Schedule 6, the "Equipment") into the Toll System Field Equipment by Owner or any agent or contractor of Owner either before or after Substantial Completion and provide a report to Owner and Service Provider identifying any damage to the Toll System Field Equipment which has been caused as a result of the installation of such Equipment into the Toll System Field Equipment by Owner, its contractors and/or agents.
- (v) Provide any determinations contemplated in the Services Agreement, which determinations may be subject to final resolution between the SA Parties pursuant to Schedule 20 – Dispute Resolution Procedure to the Services Agreement.
- (w) Participate in and give the SA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the SA Parties that relate to the Certification Services.
- (x) Provide advice on other matters that may arise that both SA Parties may jointly require.

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APPENDIX B

INDEPENDENT CERTIFIER FEE

PRICE FORM - TOTAL FIXED FEE

SSR No. 12-122P

I/We hereby offer to provide to Infrastructure Ontario, all Services, labour and materials required to provide the Services as set out in Schedule 1 to the Draft Agreement.

(a)	Total Fixed Fee for all Services with the exception of item (x) in Appendix A to the Draft Services Agreement which is to be billed at an hourly rate. \$ [redacted] Dollars Canadian
(b)	Hourly Rate(s) for the Services at item (x) in Appendix A to the Draft Services Agreement (provide separate hourly rates for all applicable rate levels. (E.g. junior staff member, senior staff member, etc.): \$ [redacted] Dollars Canadian/hour [Director - Senior] \$ [redacted] Dollars Canadian/hour [Director] \$ [redacted] Dollars Canadian/hour [Technical Specialist] \$ [redacted] Dollars Canadian/hour [Senior Consultant, Technical Specialists] \$ [redacted] Dollars Canadian/hour [Consultant] \$ [redacted] Dollars Canadian/hour [Technical Support] \$ [redacted] Dollars Canadian/hour [Administration]

*NOTE: Total Fixed Fee and Hourly Rates shall be all inclusive and include all labour and materials, insurance costs, disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law.

Infrastructure Ontario shall not reimburse the vendor for any hospitality, food or incidental expenses incurred. If applicable and subject to prior approval, Infrastructure Ontario shall reimburse the vendor for reasonable traveling expenses incurred in connection with the performance of the Services, such reimbursement to be made in accordance with the Government of Ontario's Travel, Meal, and Hospitality Expenses Directive.

Respondents must submit the information in Section 1(a) and 1(b). The evaluation of price will be based on the information provided in Section 1(a) and 1(b) above.

Provide a breakdown of the Total Fixed Fee against the Services:

Reference to Schedule A of the Draft Services Agreement	Total Fixed Fee
	[NOTE: separately set out the proportion of the Total Fixed Fee that is attributable to each of the items listed under (a) to (w) inclusive, of Schedule A of the form of Draft Services Agreement attached to this RFP, in a table with a row for each required Certification Services.]
(a)	\$ [redacted]
(b)	\$ [redacted]
(c)	\$ [redacted]
(d)	\$ [redacted]

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(e)	\$	
(f)	\$	
(g)	\$	
(h)	\$	
(i)	\$	
(j)	\$	
(k)	\$	
(l)	\$	
(m)	\$	
(n)	\$	
(o)	\$	
(p)	\$	
(q)	\$	
(r)	\$	
(s)	\$	
(t)	\$	
(u)	\$	
(v)	\$	
(w)	\$	

2. Time Task Matrix

A form of time task matrix has been provided with this Second Stage Request.

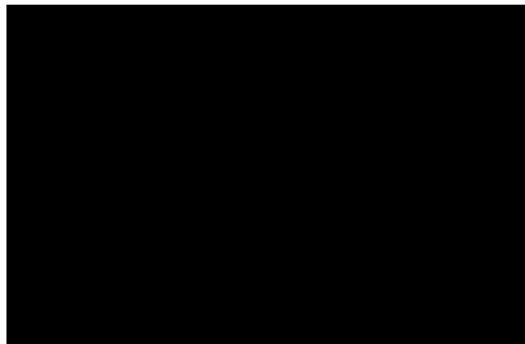
3. Taxes

The Total Fixed Fee and hourly rates and all other pricing proposals referred to in this Proposal Submission Form include all applicable duties and taxes except the Harmonized Sales Tax.

Respondent Signatures:

June 26, 2012
Date

June 26, 2012
Date



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APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

The following personnel shall be involved in the performance of the Certification Services:

1. Team Lead – [REDACTED]
2. Back up Lead – [REDACTED]
3. Tolling Expert – [REDACTED]
4. Monitoring and Certification – [REDACTED]
5. Electrical & IT – [REDACTED]
6. Dispute Resolution – [REDACTED]

INDEPENDENT CERTIFIER AGREEMENT AMENDMENT

Form of amending agreement subject to negotiation and agreement of all parties thereto.

SCHEDULE 7

KEY INDIVIDUALS

A. Service Provider Key Individuals – Works

[Redacted]

B. Service Provider Key Individuals – Services

[Redacted]

SCHEDULE 8**REVIEW PROCEDURE****PART A – WORKS PHASE****1. Definitions**

1.1 The following terms shall have the following meanings:

- (a) “**Submittal**” has the meaning given in Section 2.1 of this Schedule 8.
- (b) “**Submittal Schedule**” means the schedule for Submittals prior to the Phase 1 Substantial Completion Date, Phase 2a Substantial Completion Date, or Phase 2b Substantial Completion Date, as applicable, attached as Appendix A to this Schedule 8 as amended in accordance with this Schedule 8.

2. Submittals

2.1 The provisions of Part A of this Schedule 8 shall apply to any and all items, documents and anything else required or specified by this Services Agreement in respect of the Works, including any submission requirements set forth in the Design and Construction Output Specifications to be submitted to, reviewed or otherwise processed by Owner in accordance with the Review Procedure prior to Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, or after Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Submittal**” or “**Submittals**”). Notwithstanding the foregoing, no item, document or anything else created or used in connection with the 407ETR Tolling System including any and all subsequent revisions, amendments and changes thereto, shall be a Submittal or subject to review pursuant to this Schedule 8.

3. Submittal Schedule

3.1 The Submittal Schedule may be amended by agreement of the Parties, or in the event the Parties cannot agree, by Service Provider acting reasonably, in each case in accordance with the terms of this Section 3. Any amendment to the Submittal Schedule shall provide for a progressive and orderly flow of Submittals from Service Provider to the Owner Representative to allow sufficient time for review of each Submittal by the Owner Representative, taking into account both the resources necessary to be available to the Owner Representative to conduct such review (as anticipated by or inferred from the Submittal Schedule attached as Appendix A to this Schedule 8) and whether delay in the review of the subject matter of the Submittal shall have a material impact on Service Provider’s ability to progress future anticipated Submittals and the Works in accordance with the Works Schedule.

- 3.2 The Submittal Schedule and any amendment to the Submittal Schedule shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Submittal, provided that if Service Provider has made major changes to the grouping and volume of Submittals, such period of time shall be adjusted by Service Provider, acting reasonably, taking into account the factors set forth in Section 3.1 of this Schedule 8.
- 3.3 Service Provider shall, in scheduling Submittals and in the performance of the Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design and billing and revenue remittance functionality, allow adequate time prior to performing the Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design and billing and revenue remittance functionality that are the subject of the Submittals, for review of the Submittals and for Service Provider to make changes to Submittals that may be required if comments are received on the Submittals, such review and required changes to be in accordance with Part A of this Schedule 8.
- 3.4 If the Submittal Schedule indicates that a large number of Submittals will be made at one time, the Owner Representative may, at the Owner Representative's discretion, request a longer period for review or a staggering of the Submittals, and Service Provider shall review and revise the Submittal Schedule accordingly, taking into account both the resources necessary to be available to the Owner Representative to conduct such review (as anticipated by or inferred from the Submittal Schedule attached as Appendix A to this Schedule 8) and whether delay in the review of the subject matter of the Submittal shall have a material impact on Service Provider's ability to progress future anticipated Submittals and the Works in accordance with the Works Schedule.
- 3.5 Service Provider shall submit the Submittal Schedule, as amended, to Owner on a monthly basis until the Phase 2b Substantial Completion Date.
- 3.6 All amended Submittal Schedules shall be required to meet all the requirements of this Section 3.
- 3.7 Service Provider shall submit all Submittals to Owner in accordance with the current amended Submittal Schedule.

4. General Requirements for Submittals

- 4.1 Unless otherwise specified by the Owner Representative, Service Provider shall issue 3 printed copies of all Submittals to Owner, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Submittal to the Independent Certifier.
- 4.2 Service Provider shall compile and maintain a register of the date and contents of the submission of all Submittals and the date of receipt and content of all returned Submittals and comments thereon.

- 4.3 All Submittals shall be in English.
- 4.4 All Submittals required by this Services Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 4.5 All Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Submittal and Service Provider's proposed course of action relating to the Submittal and the Project Operations, including, but not limited to Toll System Field Equipment, web site design and functionality, report design, and/or billing and revenue remittance functionality that are the subject of the Submittal.
- 4.6 All Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.
- 4.7 All Submittals shall be clearly identified as a Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Submittals and for each Submittal: the document number(s) or drawing number(s); revision numbers (if applicable); document or drawing title(s); name of entity that prepared the Submittal; the Submittal history showing date and delivery information and/or log number of all previous submissions of that Submittal; and identification of any previous Submittal superseded by the current Submittal.

5. Comments

- 5.1 The Owner Representative shall review and respond to each Submittal in accordance with the time periods specified in Section 3 of this Schedule 8. The Owner Representative shall return Submittals to Service Provider and assign one of the following 3 comments:
 - (a) "REVIEWED";
 - (b) "REVIEWED AS NOTED"; or
 - (c) "REJECTED".
- 5.2 The comment "REVIEWED" will be assigned to those Submittals that, in the opinion of the Owner Representative, conform to the requirements of this Services Agreement. Service Provider shall comply with and implement such Submittals.
- 5.3 The comment "REVIEWED AS NOTED" will be assigned to those Submittals that, in the opinion of the Owner Representative, generally conform to the requirements of this Services Agreement, but in which immaterial deficiencies have been found by the Owner Representative's review. Service Provider shall correct these Submittals and provide a copy of the corrected Submittals to the Owner Representative before Service Provider implements such Submittals for the purposes of the Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design,

and/or billing and revenue remittance functionality. Service Provider shall comply with and implement such Submittals after correction, including in accordance with the comments. If at any time it is discovered that Service Provider has not corrected the deficiencies on Submittals stamped "REVIEWED AS NOTED", then Service Provider will be required to modify the Submittals and Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design, and/or billing and revenue remittance functionality, as required to correct the deficiencies and Service Provider may be required, at the Owner Representative's discretion, to resubmit relevant Submittals. In such circumstances the Owner Representative shall act promptly in considering whether such deficiencies have been corrected and Service Provider shall obtain such confirmation prior to continuing. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 5.4 The comment "REJECTED" will be assigned to those Submittals that, in the opinion of the Owner Representative, contain significant deficiencies or do not generally conform with the requirements of this Services Agreement, including this Schedule 8. Service Provider shall correct and re-submit these Submittals within 10 Business Days after the comment has been provided to Service Provider, or such longer period as Service Provider may reasonably require, and (unless the Submittal is re-submitted within 5 Business Days) shall give the Owner Representative not less than 5 Business Days' notice of when the Submittals shall be resubmitted. The Owner Representative will then review such re-submitted Submittals and assign a comment to the corrected Submittal. The Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Service Provider to proceed. Except with the written consent of the Owner Representative, Service Provider shall not proceed with any Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design and/or billing and revenue remittance functionality to which such Submittals receiving the comment "REJECTED" relate until Service Provider obtains a comment that permits Service Provider to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 5.5 Where the Owner Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the Owner Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Services Agreement that the Submittal fails to satisfy, and, if requested by the Service Provider Representative, the Owner Representative shall meet with the Service Provider Representative to discuss the reasons for the comment.
- 5.6 If, at any time after assigning any comment to a Submittal, the Owner Representative or Service Provider discovers any significant deficiencies or any failure to conform to the requirements of this Services Agreement, the Owner Representative may revise the comment assigned to any Submittal. If the Parties agree or it is determined in accordance with Section 6 below that the revised comment is correct, Service Provider shall make all such corrections to the Submittals and the Project Operations including, but not limited to

Toll System Field Equipment, web site design and functionality, report design and/or billing and revenue remittance functionality. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 5.7 For the purpose of facilitating and expediting the review and correction of Submittals, the Owner Representative and the Service Provider Representative shall meet as may be mutually agreed to discuss and review any outstanding Submittals and any comments thereon.
- 5.8 Where a Submittal is voluminous, the Owner Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to Service Provider the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Service Provider. Any pages not returned without such an explanation as to their status shall be deemed to be "REVIEWED" by Owner.
- 5.9 In lieu of returning a Submittal, the Owner Representative may by letter notify Service Provider of the comment assigned to the Submittal and if such comment is "REVIEWED AS NOTED" or "REJECTED" the letter shall contain comments in sufficient detail for Service Provider to identify the correction sought.

6. Disputes

- 6.1 If Service Provider disputes any act of Owner or the Owner Representative in respect of a Submittal under this Part A, Service Provider shall promptly notify the Owner Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Service Provider believes a different comment should be assigned, together with appropriate supporting documentation. The Owner Representative shall review the Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Service Provider of a revised comment. If the Owner Representative confirms the original comment, Service Provider may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 6.2 If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 11.2 either Party may refer the matter for determination in accordance with Schedule 20 - Dispute Resolution Procedure.
- 6.3 If it is determined through either of the processes set out in Section 6.1 or 6.2 hereunder that Owner or Owner Representative's comments are incorrect or are not required for the Submittal to comply with the terms of the Agreement, Service Provider will be given an extension of time equal to the length of time to settle the Dispute.

7. Effect of Review

- 7.1 Any review and comment by Owner or the Owner Representative of any Submittals is for general conformity to the obligations and requirements of this Services Agreement, and

any such review and comment shall not relieve Service Provider of the risk and responsibility for the Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design and/or billing and revenue remittance functionality and for meeting all of its obligations under and requirements of this Services Agreement, and shall not create any new or additional obligations or liabilities for Owner. Without limiting the generality of the foregoing any and all errors or omissions in Submittals or of any review and comment shall not exclude or limit Service Provider's obligations or liabilities in respect of the Works under this Services Agreement or exclude or limit Owner's rights in respect of the Works under this Services Agreement.

8. Submittal Explanation

- 8.1 At any time, the Owner Representative may, acting reasonably, require Service Provider, including Service Provider's consultants, Subcontractors, and any other relevant personnel, at no additional cost to Owner, to explain to the Owner Representative and Owner's advisors the intent of Service Provider's Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications.

9. Revisions

- 9.1 Service Provider shall ensure that Submittals keep the same, unique reference number throughout the review process, and that a sequential revision number identifies all subsequent revisions of the same Submittal. Correspondence related to such Submittal shall reference the reference number and revision number.
- 9.2 Re-submittals shall clearly show all revisions from the previous Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 9.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Submittal. Electronic versions of the Submittal shall identify the persons who initialled the revisions to the printed version of the Submittal. All such revisions must be able to be integrated into the As Built Drawings.
- 9.4 Service Provider shall keep all Design Data current. If any Design Data is revised as part of a Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Submittal to which it relates.

10. Audit by the Owner Representative

- 10.1 Without limiting any other right under this Services Agreement, the Owner Representative shall have the right to audit all Submittals, including comparing all Submittals to previous Submittals.
- 10.2 If during an audit or at any other time it is discovered by Owner or Service Provider (or resolved pursuant to Section 10.3 below) that any Submittals were not correctly implemented, Service Provider shall at its sole cost and within the originally agreed schedule immediately take all necessary steps to correct and modify the applicable Submittals and the Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design and/or billing and revenue remittance functionality to which they relate and shall advise the Owner Representative of all such corrections and modifications.
- 10.3 Any Dispute concerning the implementation of a Submittal, subject to Section 6.1 above, shall be referred in the first instance to the Independent Certifier for resolution.

11. Variations

- 11.1 Subject to Section 11.2 below, no alteration or modification to the design, quality and quantity of the Project Operations including, but not limited to Toll System Field Equipment, web site design and functionality, report design and/or billing and revenue remittance functionality arising from the development of detailed design or from the co-ordination of the design in connection with any Submittal shall be construed or regarded as a Variation.
- 11.2 If, having received comments from the Owner Representative on any Submittal, Service Provider considers that compliance with those comments would amount to a Variation, Service Provider shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to Owner of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Owner may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 15 - Variation Procedure or (b) amend its comment on the Submittal or (c) refer the matter to the Dispute Resolution Procedure in accordance with Section 6.2. Any failure by Service Provider to notify Owner in accordance with this Section 11.2 that Service Provider considers compliance with any comments of the Owner Representative would amount to a Variation shall constitute an irrevocable acceptance by Service Provider that any compliance with the Owner Representative's comments shall be without cost to Owner and without any extension of time.

SCHEDULE 8**REVIEW PROCEDURE****PART B – SERVICES PHASE****1. Submittals**

- 1.1 The provisions of Part B of this Schedule 8 shall apply to any and all items, documents, systems changes, software and code changes and anything else required or specified by this Services Agreement, other than Design Data, to be submitted to, reviewed or otherwise processed by Owner in accordance with this Schedule 8 - Review Procedure after Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Submittal**” or “**Submittals**” as applicable in Part B of this Schedule 8).
- 1.2 Service Provider shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Submittal.
- 1.3 Service Provider shall, in scheduling Submittals and in the performance of the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality, allow adequate time prior to performing the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality, that are the subject of the Submittals, for review of the Submittals and for Service Provider to make changes to Submittals that may be required if comments are received on the Submittals, such review and required changes to be in accordance with Part B of this Schedule 8.

2. General Requirements for Submittals

- 2.1 Unless otherwise specified by the Owner Representative, Service Provider shall issue 3 printed copies of all Submittals to Owner, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 2.2 Service Provider shall compile and maintain a register of the date and contents of the submission of all Submittals and the date of receipt and content of all returned Submittals and comments thereon.
- 2.3 All Submittals shall be in English.
- 2.4 All Submittals required by this Services Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.

- 2.5 All Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Submittal and Service Provider's proposed course of action relating to the Submittal and the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality, that are the subject of the Submittal.
- 2.6 All Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications.
- 2.7 All Submittals shall be clearly identified as a Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Submittals and for each Submittal: the document number(s) or drawing number(s); revision numbers (if applicable); document or drawing title(s); name of entity that prepared the Submittal; the Submittal history showing date and delivery information and/or log number of all previous submissions of that Submittal; and identification of any previous Submittal superseded by the current Submittal.

3. Comments

- 3.1 The Owner Representative shall review and respond to each Submittal in accordance with the time periods specified in Section 1.2 of this Schedule 8. The Owner Representative shall return Submittals to Service Provider and assign one of the following 3 comments:
- (a) "REVIEWED";
 - (b) "REVIEWED AS NOTED"; or
 - (c) "REJECTED".
- 3.2 The comment "REVIEWED" will be assigned to those Submittals that, in the opinion of the Owner Representative, conform to the requirements of this Services Agreement. Service Provider shall comply with and implement such Submittals.
- 3.3 The comment "REVIEWED AS NOTED" will be assigned to those Submittals that, in the opinion of the Owner Representative, generally conform to the requirements of this Services Agreement, but in which immaterial deficiencies have been found by the Owner Representative's review. Service Provider shall correct these Submittals and provide a copy of the corrected Submittals to the Owner Representative before Service Provider implements such Submittals for the purposes of the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality. Service Provider shall comply with and implement such Submittals after correction, including in accordance with the comments. If at any time it is discovered that Service Provider has not corrected the deficiencies on Submittals stamped "REVIEWED AS NOTED", then Service Provider will be required to modify the Submittals and Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality, as required to correct

the deficiencies and Service Provider may be required, at the Owner Representative's discretion, to resubmit relevant Submittals. In such circumstances the Owner Representative shall act promptly in considering whether such deficiencies have been corrected and Service Provider shall obtain such confirmation prior to continuing. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 3.4 The comment "REJECTED" will be assigned to those Submittals that, in the opinion of the Owner Representative, contain significant deficiencies or do not generally conform with the requirements of this Services Agreement, including this Schedule 8. Service Provider shall correct and re-submit these Submittals within 10 Business Days after the comment has been provided to Service Provider, or such longer period as Service Provider may reasonably require, and (unless the Submittal is re-submitted within 5 Business Days) shall give the Owner Representative not less than 5 Business Days' notice of when the Submittals shall be resubmitted. The Owner Representative will then review such re-submitted Submittals and assign a comment to the corrected Submittal. The Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Service Provider to proceed. Except with the written consent of the Owner Representative, Service Provider shall not proceed with any Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality, to which such Submittals receiving the comment "REJECTED" relate until Service Provider obtains a comment that permits Service Provider to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.5 Where the Owner Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the Owner Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Services Agreement that the Submittal fails to satisfy, and, if requested by the Service Provider Representative, the Owner Representative shall meet with the Service Provider Representative to discuss the reasons for the comment.
- 3.6 If, at any time after assigning any comment to a Submittal, the Owner Representative or Service Provider discovers any significant deficiencies or any failure to conform to the requirements of this Services Agreement, the Owner Representative may revise the comment assigned to any Submittal. If the Parties agree or it is determined in accordance with Section 4 below that the revised comment is correct, Service Provider shall make all such corrections to the Submittals and the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 3.7 For the purpose of facilitating and expediting the review and correction of Submittals, the Owner Representative and the Service Provider Representative shall meet as may be

mutually agreed to discuss and review any outstanding Submittals and any comments thereon.

- 3.8 Where a Submittal is voluminous, the Owner Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Submittal with the appropriate comment, if any, and return to Service Provider the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Service Provider. Any pages not returned without such an explanation as to their status shall be deemed to be "REVIEWED" by Owner.
- 3.9 In lieu of returning a Submittal, the Owner Representative may by letter notify Service Provider of the comment assigned to the Submittal and if such comment is "REVIEWED AS NOTED" or "REJECTED" the letter shall contain comments in sufficient detail for Service Provider to identify the correction sought.

4. Disputes

- 4.1 If Service Provider disputes any act of Owner or the Owner Representative in respect of a Submittal under this Part B, Service Provider shall promptly notify the Owner Representative of the details of such Dispute and shall submit the reasons why Service Provider believes a different comment should be assigned, together with appropriate supporting documentation. The Owner Representative shall review the Submittal, the reasons and supporting documentation and within five Business Days after receipt thereof shall either confirm the original comment or notify Service Provider of a revised comment.
- 4.2 If after such review by the Owner Representative Service Provider disputes the comment on a Submittal, subject to Section 9.1 Service Provider may refer the matter for determination in accordance with Schedule 20 - Dispute Resolution Procedure.

5. Effect of Review

- 5.1 Any review and comment by Owner or the Owner Representative of any Submittals is for general conformity to the obligations and requirements of this Services Agreement, and any such review and comment shall not relieve Service Provider of the risk and responsibility for the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality and for meeting all of its obligations under and requirements of this Services Agreement, and shall not create any new or additional obligations or liabilities for Owner. Without limiting the generality of the foregoing any and all errors or omissions in Submittals or of any review and comment shall not exclude or limit Service Provider's obligations or liabilities under this Services Agreement in respect of matters related to the Submittal or exclude or limit Owner's rights under this Services Agreement in respect of matters related to the Submittal.

6. Submittal Explanation

6.1 At any time, the Owner Representative may, acting reasonably, require Service Provider, including Service Provider's consultants, Subcontractors, and any other relevant personnel, at no additional cost to Owner, to explain to the Owner Representative and Owner's advisors the intent of Service Provider's Submittals, including as to its satisfaction of the Output Specifications.

7. Revisions

7.1 Service Provider shall ensure that Submittals keep the same, unique reference number throughout the review process, and that a sequential revision number identifies all subsequent revisions of the same Submittal. Correspondence related to such Submittal shall reference the reference number and revision number.

7.2 Re-submittals shall clearly show all revisions from the previous Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.

7.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Submittal. Electronic versions of the Submittal shall identify the persons who initialled the revisions to the printed version of the Submittal.

8. Audit by the Owner Representative

8.1 Without limiting any other right under this Services Agreement, the Owner Representative shall have the right to audit all Submittals, including comparing all Submittals to previous Submittals.

8.2 If during an audit or at any other time it is discovered by Owner or Service Provider that any Submittals were not correctly implemented, Service Provider shall at its sole cost immediately take all necessary steps to correct and modify the applicable Submittals and the Service Provider Services including, but not limited to Toll System Field Equipment, web site functionality, report functionality and/or billing and revenue remittance functionality to which they relate and shall advise the Owner Representative of all such corrections and modifications.

9. Variations

9.1 If, having received comments from the Owner Representative on any Submittal, Service Provider considers that compliance with those comments would amount to a Variation,

Service Provider shall, within ten Business Days of receipt of and before complying with the comments, provide written notice to Owner of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 20 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, Owner may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 15 - Variation Procedure or amend its comment on the Submittal. Any failure by Service Provider to notify Owner in accordance with this Section 9.1 that Service Provider considers compliance with any comments of the Owner Representative would amount to a Variation shall constitute an irrevocable acceptance by Service Provider that any compliance with the Owner Representative's comments shall be without cost to Owner and without any extension of time.

APPENDIX A
SUBMITTAL SCHEDULE

[Redacted]

SCHEDULE 9
OUTLINE COMMISSIONING PROGRAM

[Redacted]

SCHEDULE 10

TITLE ENCUMBRANCES

The following Encumbrances are registered against title to the Site:

1. To be updated after the Amended and Restated Effective Date.

SCHEDULE 11

WORKS SCHEDULE

1.1 The Works Schedule

- (a) Within
- (i) **[Redacted]** after the Notice to Proceed and receipt of the Owner's, or Owner Party's works schedule for the construction of the road works and tolling system civil works in respect of Phase 1, and
 - (ii) **[Redacted]** after receipt of the Owner's, or Owner Party's works schedule for the construction of the road works and tolling system civil works in respect of Phase 2a and Phase 2b,

Service Provider shall prepare and submit to Owner and the Independent Certifier a detailed, computerized schedule using **[Redacted]** or other software compatible with **[Redacted]** that supports the completion of the Works in accordance with Section 17.1 of the Services Agreement and reflecting the following requirements: **[Redacted]**

- (b) Owner shall provide Service Provider with comments on the draft schedule in accordance with Schedule 8 - Review Procedure, and Service Provider shall revise the draft schedule to the extent required by Schedule 8 - Review Procedure within 30 days of receipt of any comments from Owner.
- (c) When agreed by the Parties, the draft schedule shall become the Works Schedule.
- (d) The Works Schedule shall be prepared in accordance with Good Industry Practice for a large, complex project consistent with the Project and shall be in sufficient detail so as to enable the Owner Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works.
- (e) **[Redacted]**
- (f) Service Provider shall monitor the progress of the Works in relation to the Works Schedule and, every 30 days from the date the Works Schedule is agreed until the Final Phase 2b Completion Date, Service Provider shall provide to the Owner Representative and the Independent Certifier a Works Report, which will include an updated Works Schedule. The critical path method shall be maintained for all updates and revisions to the Works Schedule.
- (g) **[Redacted]**

Appendix “A”

See attached.

[Redacted]

SCHEDULE 12**COMMUNICATIONS PROTOCOL****1. GENERAL****1.1 Communications Principles**

The Project represents an important infrastructure and outsourcing commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure that these aspects of the Toll System are protected and the public is informed and engaged where necessary. This plan will support effective communications between Service Provider and Owner, and with Owner stakeholders.

2. OWNER RESPONSIBILITIES**2.1 Lead Communications Role**

Owner will assume the lead communications role. Owner will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) subject to Service Provider's obligation to comply with Applicable Law, providing final review and approval of all public communications materials, other than materials with respect to the Service Provider that are filed or disclosed as required by Applicable Law;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues; and
- (f) providing coordinated updates to internal/ external stakeholders, as required.

2.2 Owner Communications Responsibilities During the Works Phase

In the period up to the Phase 2b Substantial Completion Date, Owner will be responsible for the following matters:

- (a) **Communications:** To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project.

- (b) Crisis Communications: To undertake, in cooperation with Service Provider, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days of Effective Date outlining the roles and responsibilities of both Owner and Service Provider during a crisis situation.

2.3 Communications Responsibilities During the Operational Term

No later than [Redacted] to the Scheduled Phase 1 Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

3. SERVICE PROVIDER RESPONSIBILITIES

3.1 Support Communications Role

Service Provider will assume a supporting role with respect to communications related to the Project. In connection therewith, Service Provider will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed protocols and timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by Owner for website content;
- (d) maintaining and updating the Project website, as required;
- (e) updating, in collaboration with Owner, internal/ external stakeholders, as required, including involvement and participation in community events;
- (f) providing the public/ media reasonable access to the Site for milestone events;
- (g) directing all media enquiries and interview requests to Owner's lead communications contact;
- (h) maintaining a written record of all material public enquiries, complaints and communications and providing copies to Owner's lead communications contact on a weekly basis (or immediately if urgent);
- (i) reporting to Owner on communications matters on an agreed upon basis;
- (j) participating in Owner communications meetings, as required; and
- (k) during a crisis situation, ensuring and making available sufficient resources to work effectively with Owner and proactively manage and perform its communications responsibilities.

3.2 Service Provider Communications Responsibilities During the Works Phase

In the period up to the Phase 2b Substantial Completion Date, Service Provider will:

- (a) coordinate with Owner in the implementation of the construction liaison and communications plan;
- (b) attend regular meetings with Owner to discuss communication issues and developments;
- (c) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (d) develop, in collaboration with Owner, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (e) follow any guidelines provided by Owner related to signage or advertising at the Site.

3.3 Service Provider Communications Responsibilities During the Operational Term

No later than [Redacted] to the Scheduled Phase 1 Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

4. MEDIA RELEASES

4.1 Media Releases/Publicity

- (a) Unless otherwise required by Applicable Law (but only to that extent), Service Provider shall not, and shall ensure that no Service Provider Party shall, contribute to issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Services Agreement or any matters related thereto, without the prior written consent of Owner, in its Sole Discretion.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Services Agreement or any matter related thereto, without the prior written consent of the other Party.
- (c) Service Provider shall, and shall ensure that all Service Provider Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with Owner's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Owner from time to time.

SCHEDULE 13

[RESERVED]

SCHEDULE 14

PAYMENT MECHANISM

1. INTERPRETATION

Capitalized terms used herein and not otherwise defined in this Schedule 14 have the meaning ascribed to them in Schedule 1 – Definitions and Interpretation.

1.1 Definitions

In this Schedule, the following terms shall have the following meanings:

- (a) “**Annually Indexed**”, whether capitalized or not, has the meaning given in Section 1.2;
- (b) “**Base Date**” means [Redacted];
- (c) “**Contract Month**” means a calendar month, except for the first Contract Month, which runs from the Phase 1 Payment Commencement Date until the end of the calendar month in which the Phase 1 Payment Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date;
- (d) “**Contract Year**” means each of:
 - (i) the period from the Effective Date to [Redacted];
 - (ii) each subsequent 12 calendar months commencing [Redacted]; and
 - (iii) the period from [Redacted] in the year in which this Agreement expires or is terminated (for whatever reason) to the Termination Date;
- (e) “**Deduction**” has the meaning given to it in Section 3.2(a);
- (f) “**Gross Monthly Service Payment**” means the sum calculated in accordance with Appendix A;
- (g) “**Inflation Index**” means Consumer Price Index in Toronto as at the first of the month in which that date occurs, as published by Statistics Canada or, if the Consumer Price Index in its present form is unavailable in the future, such similar index as may be agreed by the parties, acting reasonably, and if such agreement cannot be reached, as determined pursuant to the Dispute Resolution Procedure set out in Schedule 20 - Dispute Resolution Procedure;
- (h) “**Monthly Service Payment**” means the sum calculated in accordance with Section 2.1;
- (i) “**Misconduct**” has the meaning given to it in Section 5.3;

- (j) “**Net Service Failure Points**” has the meaning given to it in Section 4.1.3;
- (k) “**Performance Monitoring Period**” means the reporting period specified in the Services Output Specifications for which Service Provider has an obligation to prepare a Performance Monitoring Report (Schedule 14) for Owner;
- (l) “**Performance Monitoring Report (Schedule 14)**” has the meaning given to it in Section 5.1(a);
- (m) “**Performance Monitoring Reports**” means the reports specified in the Services Output Specifications in respect of a Service Provider Service or a part of a Service Provider Service which Service Provider has an obligation to prepare for Owner in respect of its performance of that Service Provider Service or the relevant part of it during a specified period;
- (n) “**Service Failure**” means for any Payment Period any failure by Service Provider to provide the Service Provider Services in accordance with the measures and performance levels specified in the Key Performance Indicators;
- (o) “**Service Failure Points**” means the points assessed against Service Provider in each Payment Period in respect of Service Failures;
- (p) “**Threshold Failure**” means the accumulation by Service Provider in any three (3) month rolling Payment Period of a number of Net Service Failure Points that fits within one of the number ranges listed in Column A of Appendix B set out in each threshold specified in Appendix B; and
- (q) “**Threshold Failure Deduction Rate**” means the percentage value specified in Column B of Appendix B corresponding to the applicable Threshold Failure specified in Column B of Appendix B.

1.2 Annually Indexed

- (a) If an amount is said to be “Annually Indexed” whether such term is capitalized or not, it means the amount is to be adjusted as of the start of each Contract Year to reflect the effects of inflation as measured by changes in the Inflation Index from the Base Date to February 1st of the immediately preceding Contract Year.

2. CALCULATION OF MONTHLY SERVICE PAYMENTS

2.1 Monthly Service Payments

- (a) Owner will pay Service Provider the Monthly Service Payments calculated in respect of the applicable Contract Month as follows:
 - (i) in respect of each Contract Month from and after the Phase 1 Payment Commencement Date:

- (A) the Gross Monthly Service Payment for the relevant Contract Year;
 - (B) minus the aggregate of Deductions and deductions in respect of Misconduct;
 - (C) minus the Default Interest Rate multiplied by the dollar amounts not deposited giving rise to the **[Redacted]**, multiplied by the number of days that the amounts not deposited giving rise to **[Redacted]** is outstanding divided by 365 (or 366, as applicable).
- (b) For greater certainty, Service Provider is not entitled to any Monthly Service Payments for any period prior to the Phase 1 Payment Commencement Date.
- (c) In the Contract Month in which the Phase 1 Payment Commencement Date falls and in the last Contract Month of the Project Term, a pro rata adjustment shall be made to non-variable charges to reflect the actual number of days in the relevant Contract Month.

2.2 Annual Indexation

- (a) The Gross Monthly Service Payments designated in Appendix A shall be Annually Indexed by **[Redacted]**% of the change in the annual Inflation Index.

2.3 Gross Monthly Service Payment Review

- (a) Six months prior to the 5th anniversary of the Phase 1 Substantial Completion Date or any extension term, Owner and Service Provider shall, in good faith and acting reasonably, commence negotiations to determine adjustments, if any, to the rates comprising the Gross Monthly Service Payment that apply to the balance of the term of this Services Agreement then in effect. Owner and Service Provider agree that the negotiations under this Section (a) shall consist of the exchange of at least one good faith proposal and counter-proposal, if necessary, in respect of adjustments to the rates comprising the Gross Monthly Service Payment. Owner and Service Provider agree that no adjustment of the rates comprising the Gross Monthly Service Payment shall be effective in the absence of a written agreement between Owner and Service Provider.

3. DEDUCTIONS FROM MONTHLY SERVICE PAYMENTS

3.1 Entitlement to Make Deductions

- (a) If at any time after the Phase 1 Payment Commencement Date a Threshold Failure or Misconduct takes place, Owner will be entitled to make Deductions in respect of that Threshold Failure and a deduction in respect of such Misconduct from the Gross Monthly Service Payment for the relevant Contract Month, except that:
- (i) subject to Section 5.2.1(c) of this Schedule, the maximum aggregate of all Deductions and deductions in respect of Misconduct that Owner can make from a Gross Monthly Service Payment in respect of a Contract Month shall not exceed **[Redacted]**% of the Gross Monthly Service Payment; and

- (ii) to the extent that Threshold Failure is the result of an Excusing Cause or a Compensation Event, a Relief Event, or an event of Force Majeure, Owner will not be entitled to make Deductions.

3.2 Deductions for Threshold Failures

- (a) Subject to Section 3.1 of this Schedule, the amount to be deducted from the Gross Monthly Service Payment in any Contract Month in respect of all Threshold Failures applied to such Contract Month will be the product of the Gross Monthly Service Payment that applies for such Contract Month multiplied by the Threshold Failure Deduction Rate that applies for such Contract Month (the “**Deduction**”).
- (b) Nothing in this Section 3.2 will limit the occurrence of a Deduction in respect of additional Threshold Failures that take place in respect of the next Contract Month.

4. NET SERVICE FAILURE POINTS

4.1 Net Service Failure Points and Service Failures

- (a) Service Failure Points shall be assessed for every Service Failure that occurs during any Payment Period in the Operational Term. For greater clarity, no Service Failure Points will be assessed prior to the Phase 1 Payment Commencement Date.
- (b) A Service Failure shall have occurred if (i) it occurs within a Payment Period and (ii) such failure results in the awarding of demerit points pursuant to the Key Performance Indicators set out in the Services Output Specifications.
- (c) The number of Service Failure Points which shall be assessed in respect of each Service Failure shall equal the number of demerit points attributed to the relevant Key Performance Indicator set out in the Services Output Specifications. Where the Service Provider earns merit points attributed to the relevant Key Performance Indicator set out in the Services Output Specifications in the same Payment Period where Service Failure Points are assessed, the demerit points shall be offset by the merit points in respect of such Payment Period and the net demerit points shall comprise the Service Failure Points for such Payment Period (the “**Net Service Failure Points**”).
- (d) Where the Performance Monitoring Period referable to the Service Failure in question is a period which begins in a Contract Month and expires in another, the Service Failure Points to be assessed in respect of such Service Failure shall be included in the total number of Service Failure Points for the Contract Month during which the Service Failure which took place comes to an end.
- (e) Where the Performance Monitoring Period referable to the Service Failure in question is a period which begins and ends on the first and last day of a Contract Month or is a period which is wholly contained within the Contract Month or where no specific Performance Monitoring Period is referable to the Service Failure in question, the Service

Failure Points to be assessed in respect of such Service Failure shall be included in the total number of Service Failure Points for that Contract Month.

5. FAILURE BY SERVICE PROVIDER TO MONITOR OR REPORT

5.1 Performance Monitoring Report (Schedule 14)

- (a) The performance monitoring report (the “**Performance Monitoring Report (Schedule 14)**”) produced by Service Provider for any Contract Month will be the initial source of the information regarding the performance of the Service Provider Services for the relevant Contract Month for the purposes of calculating the relevant Deductions, the number of Net Service Failure Points assessed and the number of Warning Notices issued. The Performance Monitoring Report (Schedule 14) shall present the required information on a monthly, rolling three months, quarterly and annual basis.
- (b) As part of the Performance Monitoring Report (Schedule 14), Service Provider shall calculate for each Contract Month:
- (i) a description of each Service Failure;
 - (ii) the total number of Service Failure Points assessed against each Key Performance Indicator;
 - (iii) the total number of merit points attributed to each Key Performance Indicator;
 - (iv) the total amount of Net Service Failure Points assessed in respect of Service Failures;
 - (v) the Threshold Failure reached;
 - (vi) the Threshold Failure Deduction Rate applied; and
 - (vii) the Deduction applied.

5.2 Failure to Monitor or Report

- (a) If Service Provider fails to deliver the Performance Monitoring Report (Schedule 14) or any number of reports required by Schedule 28 – Output Specifications by the date required for such report (a “**Reporting Failure**”):
- (i) such failure will be deemed to accrue **[Redacted]** Service Failure Points for the Reporting Failure and the maximum number of Service Failure Points relative to each Service Failure that has not been reported and relevant Deductions will be made in addition to the Deductions that would have been made had there been no failure to monitor or report;
 - (ii) furthermore, if within ten days of receiving written notice from Owner of a Reporting Failure, Service Provider does not provide copies of all reports that it

failed to deliver that constituted the Reporting Failure, the **[Redacted]** Service Failure Points accrued pursuant to Section 5.2.1(a) above will be increased to **[Redacted]** Service Failure Points per report not delivered within ten days of such written notice, up to an aggregate maximum of **[Redacted]** Service Failure Points; provided, however, such Service Failure Points above **[Redacted]** will only apply to the Contract Month to which they relate and will not carry over to the following two Contract Months;

- (iii) Owner will be entitled to make Deductions in respect of any Threshold Failure in the manner prescribed in this Schedule for a previous Contract Month, with any such Deductions being made from the Gross Monthly Service Payment payable in respect of the Contract Month in which the relevant matters became known to Owner and such Deductions will not be subject to the maximum aggregate of Deductions set out in Section 3.1.1(a) for the current Contract Month but rather will be subject to the maximum aggregate Deductions set out in Section 3.1.1(a) for the applicable previous Contract Month; and
- (iv) subsequent to the application of Section 5.2.1(a), (b), if applicable, and (c), if the applicable Reporting Failure is subsequently rectified by demonstrating that the relevant monitoring did occur or providing the relevant report showing that the relevant Service Failure or Threshold Failure did not occur, then the Deduction applied in respect of such Service Failure or Threshold Failure shall be adjusted as required to reflect the results of the subsequent report; provided, for greater certainty, the **[Redacted]** Service Failure Points accrued pursuant to Section 5.2.1(a) or such number of point accrued pursuant to Section 5.2.1(b), as applicable, shall not be adjusted.

5.3 Misconduct

- (a) If Owner’s inspection or investigation of records or other information reveals, on the part of Service Provider or a Service Provider Party, in respect of any material matter:
 - (i) fraudulent action or inaction in connection with this Agreement; or
 - (ii) deliberate misrepresentation in connection with this Agreement; or
 - (iii) gross misconduct in connection with this Agreement (collectively, “**Misconduct**”),

then, subject to Section 3.1.1(a), Service Provider shall be deemed to accrue **[Redacted]** Service Failure Points for each instance of Misconduct which shall equal a **[Redacted]**% deduction from the Monthly Service Payment and such deduction will be made in addition to any Deductions that would have been made had there been no Misconduct.

5.4 No Prejudice to Other Rights

- (a) The provisions of this Section 5 are without prejudice to any other rights of Owner in the Services Agreement.

APPENDIX A

GROSS MONTHLY SERVICE PAYMENTS AND INDEXATION FACTOR

Gross Monthly Service Payments will be made as follows:

[Redacted]

APPENDIX B

THRESHOLD FAILURES AND THRESHOLD FAILURE DEDUCTION VALUES

[Redacted]

SCHEDULE 15

VARIATION PROCEDURE

1. VARIATIONS

1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 15.
 - (ii) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 15.
 - (iii) “**Owner Work**” has the meaning given in Section 1.7(a) of this Schedule 15.
 - (iv) “**Service Provider Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 15.
 - (v) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Service Provider Services.
 - (vi) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii) of this Schedule 15.
 - (vii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Owner Representative directing Service Provider to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
 - (viii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 15.

1.2 General

- (a) Owner has the right from time to time to propose and require Service Provider to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 15.
- (b) Owner shall be obligated to proceed with a Variation in certain circumstances specified in this Services Agreement, and any such Variation shall be subject to the provisions of this Schedule 15.

- (c) Service Provider will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 15.

1.3 Variation Enquiry

- (a) If Owner proposes or is obligated pursuant to the terms of this Services Agreement or Applicable Law to initiate a Variation it shall deliver to Service Provider a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
 - (i) describe the proposed Variation with sufficient detail to enable Service Provider to prepare a detailed Estimate;
 - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Owner intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments, or a combination thereof; and
 - (iii) provide a preliminary indication of any provisions of this Services Agreement (including the Output Specifications or the Service Provider proposal extracts) that will be affected by the proposed Variation, as well as the amendments to this Services Agreement (including the Output Specifications or the Service Provider proposal extracts) that may be necessary to accommodate the Variation.

1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Service Provider shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

1.5 Service Provider Grounds for Objection

- (a) Service Provider may only refuse to deliver an Estimate if Service Provider can demonstrate to Owner’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
 - (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
 - (ii) the implementation of the Variation would:
 - (A) infringe any Applicable Law or infringe or misappropriate the intellectual property rights of any Person;

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- (B) cause to be revoked any existing Permit, Licence or Approval required by Service Provider to perform the Project Operations, and such Permit, Licence or Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or
 - (C) require a new Permit, Licence or Approval for Service Provider to perform the Project Operations, which Permit, Licence or Approval will not, using commercially reasonable efforts by Service Provider or Owner, as applicable, be obtainable;
- (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 15;
 - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
 - (v) Owner does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 15 in respect of or in connection with the Variation;
 - (vi) the Variation would require changes to the 407ETR Tolling System that would negatively affect the business or operations of 407ETR and Service Provider has determined, acting reasonably, that there is no commercially reasonable work-around or alternative approach in respect of the proposed Variation which would avoid negatively affecting the business or operations of 407ETR;
 - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Service Provider to prepare an Estimate in respect thereof);
 - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Service Provider despite commercially reasonable efforts; or
 - (ix) in the case of a Variation relating to the Service Provider Services, the time specified for implementation of such Variation cannot be achieved by Service Provider despite commercially reasonable efforts.
- (b) If Service Provider refuses to provide an Estimate on the grounds set out in Section 1.5(a), Service Provider shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Owner a written notice specifying the grounds upon which Service Provider rejects the Variation and the details thereof.

1.6 Estimate Requirements

- (a) Unless Owner in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Owner's reasonable satisfaction:
- (i) the steps Service Provider will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
 - (ii) any impact on the Scheduled Phase 1 Substantial Completion Date, Scheduled Phase 2a Substantial Completion Date, Scheduled Phase 2b Substantial Completion Date, and any other schedule impact on the provision of the Toll System and completion of the Works;
 - (iii) any impact on the performance of the Project Operations and any other impact on this Services Agreement;
 - (iv) any impact on expected usage of utilities, including those identified in Schedule 14 - Payment Mechanism, for the current Contract Year and subsequent Contract Years;
 - (v) any amendments to this Services Agreement (including Schedule 14 - Payment Mechanism) required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Owner to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
 - (vi) any impact on the Direct Costs of Service Provider and its Subcontractors, including:
 - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Service Provider's cash flows from incurring, reducing or avoiding such costs (whether financed by Service Provider or Owner); and
 - (B) any other costs that will be incurred, reduced or avoided and the impact on Service Provider's cash flows from incurring, reducing or avoiding such costs;
 - (vii) Service Provider's confirmation that:
 - (A) if the proposed Variation increases Service Provider's costs, that Service Provider's existing financing is adequate or that Service Provider requires new or additional financing, and if new or additional financing is required, Service Provider's indication as to the availability of financing for the Variation and the cost and terms of such financing;

- (viii) Service Provider's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments;
- (ix) any Permits, Licences and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Service Provider must receive a Variation Confirmation and obtain or amend such Permits, Licences and Approvals for the Estimate to remain valid; and
- (x) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Services Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Service Provider shall include sufficient information to demonstrate to Owner's satisfaction, acting reasonably, that:
 - (i) Service Provider has used or has obliged its Subcontractors (or will oblige any Subcontractors not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) all costs of Service Provider and its Subcontractors are limited to Direct Costs;
 - (iii) Service Provider and its Subcontractors shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Service Provider and its Subcontractors is calculated on any other margin of Service Provider and its Subcontractors) and no other margins or mark-ups;
 - (iv) all costs of providing Project Operations, including Capital Expenditures, reflect:
 - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
 - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
 - (C) any and all changes in risk allocation;
 - (v) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs and Monthly Service Payments; and

- (vi) Service Provider has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred to the extent it is able to recover its costs associated with such mitigation.
- (c) Service Provider will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Service Provider would apply if all costs incurred were to its own account without recourse to Owner, including using commercially reasonable efforts to mitigate such costs.
- (d) As soon as practicable, and in any event not more than 15 Business Days after Owner receives an Estimate, Service Provider and Owner shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
- (e) If Owner would be required by Applicable Law or any policy applicable to Owner to competitively tender any contract in relation to the proposed Variation, Owner may require Service Provider to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
- (f) Owner may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Service Provider shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Owner in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 20 - Dispute Resolution Procedure.

1.7 Owner's Right to Perform

- (a) At any time, Owner shall have the right to perform the subject matter of a proposed Variation (“**Owner Work**”) itself, or through others contracting directly with Owner, without compensation to Service Provider, except as specifically stated herein.
- (b) Owner shall indemnify and save Service Provider harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Service Provider as a direct result of, in respect of, or arising out of the performance by Owner, or any third party, of Owner Work, including, without limitation, any loss or expense related to any adverse impacts on the Project Operations.

1.8 Variation Confirmation

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 20 - Dispute Resolution Procedure, Owner shall either:

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- (i) withdraw the Variation Enquiry by written notice to Service Provider; or
 - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Service Provider obtaining financing pursuant to Section 1.9.
- (b) If Owner does not issue a Variation Confirmation within such 15 Business Days, then the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Service Provider obtaining financing pursuant to Section 1.9:
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Services Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Service Provider as provided in Section 1.10;
 - (ii) Service Provider shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Services Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed; and
 - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Service Provider obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Service Provider obtains such financing acceptable to Owner and Service Provider in its sole discretion; or
 - (ii) Owner in its Sole Discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at Owner’s Sole Discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 20 - Dispute Resolution Procedure; and
 - (ii) Owner may at any time withdraw a Variation Enquiry and Owner shall not be obligated to Service Provider in respect of a Variation until such time as Owner in its Sole Discretion issues a Variation Confirmation and, if applicable, Service Provider has obtained the financing requested by Owner or Owner has waived such requirement,

provided that Owner may not withdraw a Variation Enquiry in circumstances where Owner is obligated pursuant to the terms of this Services Agreement to proceed with a Variation. In such circumstances Schedule 20 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 15.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Service Provider has used commercially reasonable efforts to produce a fair and accurate Estimate, Owner shall reimburse Service Provider for all Direct Costs reasonably and properly incurred by Service Provider in connection with preparing the Estimate.

1.9 Financing

- (a) If Service Provider in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Owner requests Service Provider to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Service Provider obtaining financing. In such event, Service Provider shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Service Provider and Owner, each in their sole discretion.
- (b) If Service Provider has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms satisfactory to Service Provider and Owner, each in their sole discretion, within 60 days of the date that Owner issues the Variation Confirmation, then Service Provider shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Owner, in its Sole Discretion, waives the requirement for financing or unless Owner is obligated to proceed with the Variation pursuant to the terms of this Services Agreement.
- (c) If Service Provider obtains an offer of financing on terms satisfactory to Service Provider in its sole discretion, Service Provider shall provide Owner with details of such financing, and Owner shall, in its Sole Discretion, determine whether Service Provider should proceed with such financing. If Owner determines that Service Provider should not proceed with such financing, then Service Provider shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Owner, in its Sole Discretion, waives the requirement for financing or unless Owner is obligated to proceed with the Variation pursuant to the terms of this Services Agreement.
- (d) Owner may at any time withdraw the requirement for Service Provider to use commercially reasonable efforts to obtain financing, after which Service Provider shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Owner in its Sole Discretion waives the requirement for financing or unless Owner is obligated to proceed with the Variation pursuant to the terms of this Services Agreement.

- (e) If Owner waives the requirement for financing or if Service Provider has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d), then Service Provider shall proceed with the Variation as set out in the Variation Confirmation and Owner shall pay for the Variation as provided for in Section 1.10(a)(ii).

1.10 Payment

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Service Provider or has been waived by Owner, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:

- (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and

- (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Service Provider shall be adjusted as follows:

- (A) Owner shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Owner and Service Provider, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Service Provider in carrying out the Variation to the extent borne by Owner; and

- (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out,

the payment schedule to be determined in accordance with Schedule 20 - Dispute Resolution Procedure in the event Owner and Service Provider fail to agree as to the terms of the payment schedule, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Service Provider, subject to the terms of any contract between Service Provider and that third party in relation to the implementation of the Variation having been approved by Owner (such approval not to be unreasonably withheld or delayed), the process under Schedule 20 - Dispute Resolution Procedure shall determine a payment schedule which would enable Service Provider to be funded by Owner in time to make payments to that third party in accordance with its contract with Service Provider.

- (b) Service Provider shall present to Owner invoices within five Business Days following the end of the Payment Period in which the Variation has been carried out together with evidence that the relevant part of the Variation has been carried out. Owner shall pay the amount stated in such invoice on the first Business Day of the Payment Period next following the Payment Period in which the invoice is received.

- (c) Payments by Owner in respect of a Variation shall be subject to applicable holdback provisions of the CLA, as applicable.
- (d) Service Provider shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Service Provider, Owner shall provide to Service Provider copies of any consent or approval issued by Owner in connection with a proposed Variation.

1.11 Reduction in Project Operations

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Service Provider, such savings shall result in a reduction in the compensation payable to Service Provider under this Services Agreement in an amount equal to such reduction in Direct Costs, and Service Provider shall compensate Owner by way of a reduction in the Monthly Service Payments.

1.12 Variation Directive

- (a) If an Estimate is not promptly agreed upon by Owner and Service Provider or if there is a Dispute in relation thereto or if Owner, in its Sole Discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Owner may issue a Variation Directive and, following receipt of the Variation Directive:
 - (i) Service Provider shall promptly proceed with the Variation;
 - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
 - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Phase 1 Completion or Final Phase 2b Completion, as applicable) or the Owner Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 20 - Dispute Resolution Procedure,

provided that, Owner shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

2. SERVICE PROVIDER VARIATIONS

2.1 General

- (a) Service Provider shall deliver to Owner a written notice (a “**Service Provider Variation Notice**”) for each Variation proposed by Service Provider.

2.2 Service Provider Variation Notice

- (a) A Service Provider Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable Owner to evaluate it in full;
 - (ii) specify Service Provider's reasons for proposing the Variation;
 - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Owner, and whether an adjustment to the Monthly Service Payments is required; and
 - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Owner, in its Sole Discretion, elects to consider the Variation proposed by Service Provider, Owner may issue to Service Provider a Variation Enquiry and the procedure set out in Section 1 will apply.

3. SMALL WORKS

3.1 General

- (a) After the Phase 1 Substantial Completion Date, Phase 2a Substantial Completion Date, or Phase 2b Substantial Completion Date, as applicable, Service Provider shall carry out all Small Works requested by Owner.
- (b) If Small Works are requested by Owner, Service Provider shall, within ten Business Days of each such request and prior to carrying out the Small Works, provide Owner a document specifying the (i) price, (ii) estimated duration, and (iii) implications on the delivery of Service Provider Services, in each case for carrying out the Small Works (collectively, the "**Terms**").
- (c) If Service Provider's Terms are accepted by Owner, in its Sole Discretion, Service Provider shall carry out the Small Works in accordance with such Terms.
- (d) Owner may at any time, in its Sole Discretion, including if Owner does not accept the Terms proposed by Service Provider pursuant to Section 1.3(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 15, other than this Section 3, shall apply.
- (e) Service Provider's price included in the Terms shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

3.2 Service Provider to Minimize Inconvenience

- (a) Owner and Service Provider shall work together to agree upon a convenient time for carrying out the Small Works, so as to minimize and mitigate inconvenience and disruption to Owner. Service Provider shall use commercially reasonable efforts to minimize the duration of any Small Works.

APPENDIX A

CALCULATION OF DIRECT COSTS

1. DIRECT COSTS

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means [**Redacted**]

APPENDIX B
OVERHEAD AND PROFIT MARGINS

[Redacted]

SCHEDULE 16

COMPENSATION ON TERMINATION

1. DEFINITIONS

1.1 Definitions

The following terms shall have the following meanings:

- (a) “**Compensation Date**” means, the date that the Owner Termination Fee has been agreed or determined.
- (b) “**Discount Rate**” means [Redacted]%.
- (c) “**Employee Termination Payments**” means, in respect of employees hired by Service Provider in respect of the Project that are incremental to Service Provider’s current operations, termination payments which are required under Applicable Law to be made to such employees of Service Provider as a direct result of terminating this Services Agreement (provided that Service Provider shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Service Provider arising out of:
 - (i) contracts of employment, collective agreements or other agreements or arrangements entered into by Service Provider to the extent that such contracts of employment, collective agreements, agreements or arrangements were not entered into in connection with the Project; or
 - (ii) contracts of employment, collective agreements or other agreements or arrangements entered into by Service Provider which have not been entered into in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts of employment, collective agreements or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.
- (d) “**Force Majeure Termination Sum**” has the meaning given in Section 4.1(b) of this Schedule 16.
- (e) “**Invoice Date**” means the date that is the later of:
 - (i) the date on which Owner receives an invoice from Service Provider for the relevant termination sum; and
 - (ii) the date on which Owner receives the supporting evidence required pursuant to Section 6.1(a) of this Schedule 16.
- (f) “**Legislative Holdback**” means the holdback to be maintained under Part IV of the CLA.

- (g) “**Owner Default Termination Sum**” has the meaning given in Section 2.1(c) of this Schedule 16.
- (h) “**Owner Termination Fee**” means the amount determined in accordance with Section 3 of this Schedule 16.
- (i) “**Ownership Change Fee**” has the meaning given in Section 3.2(a) of this Schedule 16.
- (j) “**Service Provider Relief Event Termination Sum**” has the meaning given to it in Section 5.1(b) of this Schedule 16.
- (k) “**Service Provider Termination Fee**” means a lump sum payment of \$[Redacted].
- (l) “**System Development Costs**” has the meaning given to it in Section 3.1(b)(ii)(B) of this Schedule 16.
- (m) “**Termination Assistance Period**” has the meaning given to it in Schedule 22 – Termination/Expiry Services.
- (n) “**Termination Assistance Services Costs**” means the cost of the Termination Assistance Services provided by Service Provider to Owner and determined pursuant to Schedule 22 – Termination/Expiry Services which, for greater certainty, excludes the Monthly Service Payment payable to Service Provider for providing the Service Provider Services during the Termination Assistance Period.
- (o) “**Wind-Down Costs**” means subject to Service Provider’s obligations under this Services Agreement to limit any termination costs:
- (i) the prepaid portions of licences and leases for software and Service Provider Equipment no longer required to provide the Service Provider Services; and
 - (ii) the undepreciated costs, assuming a depreciation rate of [Redacted]% per year, of Service Provider Equipment owned by the Service Provider and solely dedicated to the Project Operations which are no longer required to provide the Service Provider Services.

2. COMPENSATION ON TERMINATION FOR Owner DEFAULT OR CONVENIENCE

2.1 Compensation

- (a) If Owner terminates this Services Agreement pursuant to Section 41.3 of this Services Agreement prior to Owner issuing the Notice to Proceed, Owner shall pay to Service Provider all costs and expenses incurred by Service Provider that have been approved in writing by Owner prior to such termination.
- (b) If Service Provider terminates this Services Agreement pursuant to Section 40 of this Services Agreement or Owner terminates this Services Agreement pursuant to

Section 41.3 of this Services Agreement after Owner issuing the Notice to Proceed, Owner shall pay to Service Provider the Owner Default Termination Sum.

- (c) The “**Owner Default Termination Sum**” shall be an amount equal to **[Redacted]**.
- (d) To the extent that such assets and rights referred to in Section 2.1(b)(vii) are not realized and applied pursuant thereto, Service Provider shall, on payment of the Owner Default Termination Sum, assign such assets and rights to Owner.
- (e) Owner shall pay the Owner Default Termination Sum in accordance with Section 6 of this Schedule 16.
- (f) This Section 2.1 shall not apply where Owner terminates this Services Agreement under Section 43.1 of the Services Agreement pursuant to Section 53.1(e) of the Services Agreement.

3. COMPENSATION FOR SERVICE PROVIDER DEFAULT

3.1 Compensation

- (a) Save and except where Section 4 applies, if Owner terminates this Services Agreement pursuant to Section 39 of this Services Agreement, Service Provider shall pay to Owner the Owner Termination Fee.
- (b) The Owner Termination Fee will be determined and calculated solely in accordance with the principles set out below:
 - (i) **[Redacted]**
- (c) If the parties cannot agree on the calculation of the Owner Termination Fee, then the Owner Termination Fee shall be determined in accordance with Schedule 20 - Dispute Resolution Procedure.
- (d) Service Provider shall pay the Owner Termination Fee in accordance with Section 6 of this Schedule 16.

3.2 Other Compensation

- (a) If Owner terminates this Services Agreement pursuant to Section 53.1(e) of this Services Agreement, Service Provider shall pay to Owner: **[Redacted]** (collectively, the “**Ownership Change Fee**”).
- (b) Service Provider shall pay the Ownership Change Fee in accordance with Section 6 of this Schedule 16.

4. CONSEQUENCES OF FORCE MAJEURE AND RELIEF EVENT (Owner) TERMINATION

4.1 Consequences

- (a) If Service Provider or Owner terminates this Services Agreement pursuant to Section 41.2 of this Services Agreement or if Owner terminates this Services Agreement pursuant to Section 42.1 of this Services Agreement, Owner shall pay to Service Provider the Force Majeure Termination Sum.
- (b) The “**Force Majeure Termination Sum**” shall be an amount equal to the aggregate of the:

[Redacted]
- (c) To the extent that such assets and rights referred to in Section **Error! Reference source not found.** are not realized and applied pursuant thereto, Service Provider shall, on payment of the Force Majeure Termination Sum, assign such assets and rights to Owner.
- (d) Owner shall pay the Force Majeure Termination Sum in accordance with Section 6 of this Schedule 16.

5. CONSEQUENCES OF TERMINATION BY SERVICE PROVIDER FOR RELIEF EVENT

5.1 Consequences

- (a) If Service Provider terminates this Services Agreement pursuant to Section 41.1 of this Services Agreement, Owner shall pay to Service Provider the Service Provider Relief Event Termination Sum.
- (b) The “**Service Provider Relief Event Termination Sum**” shall be an amount equal to the aggregate of:

[Redacted]
- (c) To the extent that such assets and rights referred to in Section **Error! Reference source not found.** are not realized and applied pursuant thereto, Service Provider shall, on payment of the Service Provider Relief Event Termination Sum, assign such assets and rights to Owner.
- (d) Owner shall pay the Service Provider Relief Event Termination Sum in accordance with Section 6 of this Schedule 16.

6. GENERAL**6.1 Payment and Interest following Owner Default, Force Majeure or Relief Event**

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4 or 5 of this Schedule 16, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, the Service Provider shall give to Owner an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Owner, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) The Owner shall pay to Service Provider:
- (i) the relevant termination sum within 60 days after the Invoice Date; and
 - (ii) interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:
 - (A) at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
 - (B) thereafter, at the Default Interest Rate.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4 or 5 of this Schedule 16, if the applicable termination sum is negative, Owner shall have no obligation to make any payment to Service Provider and Service Provider shall, within 60 days after the Invoice Date, pay to Owner the amount by which such termination sum is negative, failing which Service Provider shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.
- (d) In respect of Termination Assistance Services Costs owing by Owner to Service Provider, such amount shall be paid to Service Provider monthly for the duration of the Termination Assistance Period.

6.2 Payment and Interest – Owner Termination Fee or Ownership Change Fee

- (a) In respect of any termination payment to be made pursuant to Section 3 of this Schedule 16, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Owner shall give to Service Provider an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Service Provider, justifying the amount of the Owner Termination Fee or Ownership Change Fee, including a detailed breakdown of each of the individual items comprising such sum.
- (b) Service Provider shall pay to Owner the Owner Termination Fee or Ownership Change Fee no later than the date falling 60 days after the date on which the Owner Termination Fee or Ownership Change Fee has been agreed or determined in accordance with

Section 3 of this Schedule 16, together with interest on such amount calculated in accordance with Section 6.1(b)(ii) above.

- (c) If the Owner Termination Fee is negative, Service Provider shall have no obligation to make any payment to Owner and Owner shall, on the Compensation Date, pay Service Provider the amount by which the Owner Termination Fee is negative, failing which Owner shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

6.3 Costs

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 16 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

6.4 Undisputed Amounts

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 6 and the disputed amount shall be dealt with in accordance with Schedule 20 - Dispute Resolution Procedure.

SCHEDULE 17

[RESERVED]

SCHEDULE 18

INSURANCE REQUIREMENTS

[Redacted]

SCHEDULE 19

RECORD PROVISIONS

1. General Requirements

- 1.1 Service Provider shall prepare, retain and maintain, at its own expense, all the records (including superceded records) referred to in Section 2.1 of this Schedule 19, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Service Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Service Provider to comply with Service Provider's obligations under Section 31 of this Services Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Wherever practical, original records shall be retained and maintained in a hard copy form, unless such records originated in electronic form in which case such records shall be retained and maintained in electronic form. Service Provider may retain true copies of original records where it is not practical to retain original records.
- 1.3 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Services Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Service Provider to Owner, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement Owner and Service Provider have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Service Provider shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.4 Records may, with the consent of Owner, be stored in electronic form if Owner has access thereto and will continue to have access thereto, such that Owner will be able to read, copy, download, and search same without licence or payment.
- 1.5 Subject to Sections 1.6 and 1.7, Service Provider shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 19 throughout the Project Term and for a period of at least 7 years from the Expiry Date or such longer period as required by Applicable Law.
- 1.6 Service Provider shall notify Owner if Service Provider wishes to destroy any records referred to in this Schedule 19 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within [Redacted] of such notice, Owner may elect to require Service Provider to deliver such records to Owner, in which case Service Provider shall, at the expense of Owner, deliver such records (with the exception of Sensitive Information) to Owner in the manner and to the location as Owner shall specify; or
 - (b) if Owner fails to notify Service Provider of its election pursuant to Section 1.6(a) within such [Redacted], Service Provider may, at its expense, destroy such records.
- 1.7 In the event of termination of this Services Agreement prior to the Expiry Date, Service Provider shall deliver all records that Service Provider retains and maintains pursuant to this Schedule 19 to Owner (or copies thereof where those records are required by: (i) statute to remain with Service Provider or; (ii) Service Provider in connection with its fulfilment of any outstanding obligations under this Services Agreement) in the manner and to the location as Owner shall reasonably specify. Owner shall make available to Service Provider all the records Service Provider delivers pursuant to this Section 1.7 subject to prior reasonable notice. Where the termination of this Services Agreement arises:
- (a) as a result of an Owner Event of Default or pursuant to Section 40.2 of the Services Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Owner; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Service Provider.
- 1.8 Within 30 days after the end of each Contract Year, Service Provider shall deliver to Owner a report, as reasonably requested by Owner in connection with Owner's financial reporting, detailing to the best of Service Provider's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Service Provider has or may have against Owner or that may be owing by Owner to Service Provider. The Parties acknowledge and agree that the contents

of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Services Agreement.

- 1.9 Service Provider shall, beginning with the fiscal quarter in which the Phase 1 Substantial Completion Date occurs, provide to Owner (to the extent that all or a part of such period to which the following documents relate falls in a Contract Year), (a) a copy of Service Provider's unaudited financial statements, in respect of first, second and third fiscal quarters in any fiscal year prepared in accordance with Applicable Law and Canadian GAAP not later than 60 days after the end of such fiscal quarter, (b) a copy of Service Provider's audited financial statements, in respect of each fiscal year, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports, not later than 120 days after the end of such fiscal year, and (c) to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, not later than 15 days after such documents are delivered to the shareholders or partners; in each case, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 45 of the Services Agreement, shall be treated by Owner as Confidential Information of Service Provider.

2. [Redacted]

SCHEDULE 19

RECORD PROVISIONS

1. General Requirements

- 1.1 Service Provider shall prepare, retain and maintain, at its own expense, all the records (including superceded records) referred to in Section 2.1 of this Schedule 19, as follows:
- (a) in accordance with this Section 1;
 - (b) in accordance with the Output Specifications;
 - (c) in accordance with the requirements of Good Industry Practice;
 - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
 - (e) in accordance with the most stringent of Service Provider's normal business practices;
 - (f) in accordance with Canadian GAAP;
 - (g) in chronological order;
 - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Service Provider to comply with Service Provider's obligations under Section 31 of this Services Agreement; and
 - (i) in a form that is capable of audit.
- 1.2 Wherever practical, original records shall be retained and maintained in a hard copy form, unless such records originated in electronic form in which case such records shall be retained and maintained in electronic form. Service Provider may retain true copies of original records where it is not practical to retain original records.
- 1.3 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Services Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Service Provider to Owner, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement Owner and Service Provider have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Service Provider shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.4 Records may, with the consent of Owner, be stored in electronic form if Owner has access thereto and will continue to have access thereto, such that Owner will be able to read, copy, download, and search same without licence or payment.
- 1.5 Subject to Sections 1.6 and 1.7, Service Provider shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 19 throughout the Project Term and for a period of at least 7 years from the Expiry Date or such longer period as required by Applicable Law.
- 1.6 Service Provider shall notify Owner if Service Provider wishes to destroy any records referred to in this Schedule 19 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, Owner may elect to require Service Provider to deliver such records to Owner, in which case Service Provider shall, at the expense of Owner, deliver such records (with the exception of Sensitive Information) to Owner in the manner and to the location as Owner shall specify; or
 - (b) if Owner fails to notify Service Provider of its election pursuant to Section 1.6(a) within such 60 day period, Service Provider may, at its expense, destroy such records.
- 1.7 In the event of termination of this Services Agreement prior to the Expiry Date, Service Provider shall deliver all records that Service Provider retains and maintains pursuant to this Schedule 19 to Owner (or copies thereof where those records are required by: (i) statute to remain with Service Provider or; (ii) Service Provider in connection with its fulfilment of any outstanding obligations under this Services Agreement) in the manner and to the location as Owner shall reasonably specify. Owner shall make available to Service Provider all the records Service Provider delivers pursuant to this Section 1.7 subject to prior reasonable notice. Where the termination of this Services Agreement arises:
- (a) as a result of an Owner Event of Default or pursuant to Section 40.2 of the Services Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Owner; or
 - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Service Provider.
- 1.8 Within 30 days after the end of each Contract Year, Service Provider shall deliver to Owner a report, as reasonably requested by Owner in connection with Owner's financial reporting, detailing to the best of Service Provider's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Service Provider has or may have against Owner or that may be owing

by Owner to Service Provider. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Services Agreement.

- 1.9 Service Provider shall, beginning with the fiscal quarter in which the Phase 1 Substantial Completion Date occurs, provide to Owner (to the extent that all or a part of such period to which the following documents relate falls in a Contract Year), (a) a copy of Service Provider's unaudited financial statements, in respect of first, second and third fiscal quarters in any fiscal year prepared in accordance with Applicable Law and Canadian GAAP not later than 60 days after the end of such fiscal quarter, (b) a copy of Service Provider's audited financial statements, in respect of each fiscal year, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports, not later than 120 days after the end of such fiscal year, and (c) to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, not later than 15 days after such documents are delivered to the shareholders or partners; in each case, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 45 of the Services Agreement, shall be treated by Owner as Confidential Information of Service Provider.

2. Records To Be Kept

- 2.1 Without limiting any other requirement of this Services Agreement, Service Provider shall prepare, retain and maintain at its own expense:
- (a) this Services Agreement and its Schedules, including all amendments to such agreements;
 - (b) all records relating to the appointment and replacement of the Owner Representative and the Service Provider Representative;
 - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 8 - Review Procedure;
 - (d) any documents relating to Development Approvals and other Service Provider Permits, Licences and Approvals, including any refusals and appeals relating to any applications;
 - (e) all records relating to any statutory inspections of the Toll System or the Site, including any roadways;
 - (f) any notices, reports, results and certificates relating to Phase 1 Substantial Completion, Phase 2a Substantial Completion, Phase 2b Substantial Completion, Final Phase 1 Completion, Final Phase 2a Completion, and Final Phase 2b Completion of the Works and completion of the Service Provider Commissioning;

- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from Owner in connection with the provision of the Service Provider Services, the monitoring of performance, the availability of the Toll System, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the provision of the Service Provider Services;
- (k) all invoices of Service Provider's Subcontractors and Suppliers comprising the cost of the Works and any other related documents in sufficient detail to substantiate the Target Price, as such Target Price may be adjusted herein;
- (l) the invoices for the Target Price payments;
- (m) the invoices for Monthly Service Payments;
- (n) all documents submitted in accordance with Schedule 15 - Variation Procedure;
- (o) the Performance Monitoring Report and all documents submitted in accordance with Schedule 14 – Payment Mechanism;
- (p) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (q) any documents related to a Service Provider Change in Ownership or Change in Control;
- (r) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
 - (i) Service Provider's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
 - (ii) Service Provider's liabilities or payments for capital taxes based on or measured by the capital of Service Provider;
 - (iii) the withholdings of any payments by Service Provider; or
 - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (s) the financial accounts of Service Provider referred to in Section 1.9 above;

- (t) such documents as Owner may reasonably require relating to business opportunities in which Owner has a right or interest;
- (u) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Service Provider with respect to the Project Operations;
- (v) any documents relating to insurance and insurance claims;
- (w) all Project Data, Intellectual Property Rights (to the extent licensed to or owned by Owner pursuant to this Services Agreement) and Jointly Developed Materials;
- (x) the Data Collection and Retention Procedures and Reports;
- (y) all reports required pursuant to Schedule 28 – Output Specifications; and
- (z) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Service Provider pursuant to this Services Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Service Provider pursuant to Section 2.1.

SCHEDULE 20**DISPUTE RESOLUTION PROCEDURE****1. General**

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Services Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Services Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Services Agreement, including, without limitation, this Schedule 20, or any matter referred to for resolution pursuant to this Schedule 20 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 20.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them; and
 - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 3 to 9 of this Schedule 20.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b), either Party may deliver to the Owner Representative or the Service Provider Representative, as applicable, a written notice of dispute (the “Notice of Dispute”), which Notice of Dispute shall initiate either the dispute resolution process described in Sections 3 to 9 of this Schedule 20 or the dispute resolution process described in Sections 7 to 9 where the Dispute is a Dispute in relation to the Independent Certifier’s decisions for which Section 2.3 provides that Sections 3, 4, 5 and 6 shall not apply. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the Owner Representative, if given by Owner, or by the Service Provider Representative, if given by Service Provider.
- 1.4 In the event of a Dispute in respect of any “Critical Item” set out in Section 13 of this Schedule 20, the provisions of that Section 13 shall solely govern the resolution of such Dispute and, except as set forth in Section 13.3 of this Schedule 20, the provisions of Sections 1.2 and 2 to 9 of this Schedule 20 shall not apply.

2. Independent Certifier

- 2.1 All Disputes that arise prior to, or in relation to, Phase 1 Substantial Completion, Phase 2a Substantial Completion, Phase 2b Substantial Completion, that relate to completion of Minor Deficiencies, or that are referred to in this Services Agreement for determination by the Independent Certifier shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be

specified in this Services Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 2.2 Without limiting any obligations of the Parties under the Independent Certifier Contract, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 2.1 of this Schedule 20.
- 2.3 The Independent Certifier's decision to issue or not to issue the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, shall be final and binding on the Parties solely in respect of determining the Phase 1 Payment Commencement Date or the Phase 2b Payment Commencement Date, respectively, and a Dispute in relation to the Phase 1 Payment Commencement Date or the Phase 2b Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 20. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 20, provided however that Sections 3, 4, 5 and 6 of this Schedule 20 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

3. Amicable Resolution by Party Representatives

- 3.1 On receipt of a Notice of Dispute, the Owner Representative and the Service Provider Representative (collectively "**Party Representatives**" and individually "**Party Representative**") shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

4. Amicable Resolution by Senior Officers of each Party

- 4.1 If a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:
- (a) is in a position of authority above that of the Owner Representative or the Service Provider Representative, as the case may be; and
 - (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.
- 4.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions

and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

5. Expert Determination

5.1 If a Dispute is not resolved by negotiation pursuant to Section 4 within 10 Business Days after the date the Dispute is referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect to a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”). The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert;
- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 20 for qualifications and experience of the Expert.

5.2 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Owner, Service Provider, or any consultant, subconsultant or subcontractor of any of them.

5.3 The Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed. Where the issues in Dispute include whether Service Provider has or will adversely impact the Service Provider Services then such qualifications and experience should include relevant experience in the provision of Service Provider Services in a tolled highway with back office operations.

5.4 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:

- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
- (b) require some or all of the evidence to be provided by affidavit;

- (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
 - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
 - (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
 - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
 - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.5 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert may give reasons or a summary of reasons for the Expert's decision, but shall not be required to provide reasons.
- 5.6 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.7 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. The Expert has the jurisdiction and authority to order that the costs of the Expert be apportioned between the Parties in such proportion as the Expert in his or her discretion considers appropriate in the circumstances, including to order that all of the costs of the Expert be apportioned to and paid by only one Party. In exercising this discretion, the Expert will take into account the desire of the Parties that costs of the Expert should generally be borne by each Party in proportion to the relative success that each Party has in the Dispute before the Expert. If the Expert fails to apportion costs of the Expert between the Parties at the time the Expert's decision is rendered, the costs of the Expert shall be borne equally by the Parties.
- 5.8 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 20.

6. Adjudication

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 3 and 4 of this Schedule 20 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 4.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 2.1 and 5.1 of this Schedule 20 or a Dispute referred to arbitration or litigation pursuant to Sections 2.3 or 5.8 of this Schedule 20 (except as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 20), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 20 (the “**Adjudicator**”).
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
- (a) be independent of and at arm’s length to Service Provider, Owner, any Government Entity and any other person having an interest in the Project;
 - (b) if the Dispute arises during the Project Term, be familiar with the Project, Project Data, Project Know How and Project Operations; and
 - (c) be a person who has the qualifications and experience with respect to the particular issues in Dispute, including, where the issues in Dispute include whether Service Provider has or will adversely impact the Toll System or the Service Provider Services, then such qualifications and experience should include relevant experience in the field of tolling systems and back office services.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council’s *Model Adjudication Procedure: Fourth Edition* (the “**Model Adjudication Procedure**”) the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the *Model Adjudication Procedure*, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that Highway 407 East is operating in accordance with all relevant specifications and requirements set forth in the Services Agreement is on Service Provider. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
 - (b) notwithstanding paragraphs 16 and 24 of the *Model Adjudication Procedure*, in any event, and subject to Section 6.4 of this Schedule 20, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business

Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event, Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 20, the Adjudicator's decision shall be binding on the Parties, but not final;

- (c) notwithstanding paragraphs 29 and 30 of the *Model Adjudication Procedure*, the Adjudicator's costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act, 1991* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2) or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the *Model Adjudication Procedure*, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Services Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Services Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Phase 1 Substantial Completion Certificate, the Phase 2a Substantial Completion Certificate, or the Phase 2b Substantial Completion Certificate, shall be final and binding on the Parties solely in respect of determining the Phase 1 Payment Commencement Date, the Phase 2a Payment Commencement Date or the Phase 2b Payment Commencement Date, respectively, and a Dispute in relation to the Phase 1 Payment Commencement Date, the Phase 2a Payment Commencement Date or the Phase 2b Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 20;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or

documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and

- (g) notwithstanding paragraph 34 of the *Model Adjudication Procedure*, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Service Provider to resolve a Dispute, those measures must be implemented by Service Provider as soon as reasonably practical, without payment by Owner unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Service Provider to resolve a Dispute, Owner may, at its option, require corrective measures to be taken forthwith by Service Provider, in which case those measures must be implemented by Service Provider as soon as reasonably practical provided that Owner undertakes to pay Service Provider for Direct Costs, plus reasonable overhead and profit incurred by Service Provider as such costs are so incurred; provided that no such costs should exceed the amount Service Provider is entitled to receive pursuant to Schedule 15 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to Owner's right to contest the determination made by the Adjudicator in a subsequent proceeding. Owner shall provide Service Provider such reasonable extensions of time in respect of Service Provider's obligations under this Agreement necessary to allow Service Provider to effect the corrective measures and such extension of time may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 20 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator's determination.

7. Referral of Disputes to Arbitration or Litigation

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 is more than \$[Redacted] (index linked) in the aggregate or \$[Redacted] (index linked) per

year, in the case of a decision by the Expert that would result in either a recurring annual payment (for a period of at least 5 years) by Owner or a recurring annual cost to Service Provider;

- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 2.3 provides that Sections 3, 4, 5 and 6 shall not apply,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 or a consolidation of proceedings pursuant to Section 11, either Party may, by written notice signed by their Party Representative, require that the Dispute be resolved by arbitration pursuant to Section 8. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination or the Notice of Dispute referred to in Section 7.1(c)7.1(c), as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Section 5 or 6 applies to arbitration or litigation pursuant to Sections 7.1 or 9.1 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert or the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

8. Resolution by Arbitration

8.1 Upon the mutual written consent of the parties,

- (a) Where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required of this Schedule 20, and
- (b) All other requirements set out in this Schedule 20 have been satisfied,

such Dispute may be referred to arbitration pursuant to Section 7, and the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act, 1991* (Ontario).

- 8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a

notice to arbitrate pursuant to Section 7.1 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.

8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
 - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 20 are on the list; or
 - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 20 are on the list of that other Party; or
 - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 20 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b);

- (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b); and
 - (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators. Where the issues in Dispute include whether Service Provider has or will adversely impact the Toll System or the Service Provider Services then such qualifications and experience should include relevant experience in the field of toll systems and back office services.
- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Owner, Service Provider, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
 - (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;

- (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
 - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Services Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
 - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and

where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 8.13 This Services Agreement, including this Schedule 20, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

9. Litigation

9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1, following receipt of the Expert's award or determination pursuant to Section 5 or of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 20, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 2.3 provides that Sections 3, 4, 5 and 6 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is \$[Redacted] (index linked) or more, taking into account recurrence over time if the Dispute involves a recurring matter; or
- (b) if the Dispute is considered by Owner to involve matters of public interest.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination or the Notice of Dispute referred to in Section 7.1(c), as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1, then:
- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11, that Dispute shall be resolved only by arbitration pursuant to Section 8; and

- (b) subject to Section 9.2(a) where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

10. Consolidation of Services Agreement Adjudication, Arbitrations and Litigation

10.1 For all Disputes that arise prior to Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, to resolve that Dispute will cause irreparable harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11;

all adjudication, arbitral and litigation proceedings between the Parties prior to Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable, shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Phase 1 Substantial Completion, Phase 2a Substantial Completion, or Phase 2b Substantial Completion, as applicable.

11. Consolidation with Third Party Disputes

11.1 Subject to Section 11.4, if either Party is involved in an arbitration in the Province of Ontario with a third party ("**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues ("**Services Agreement Arbitration**") shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if Owner, Service Provider and the other parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Services Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

11.2 Subject to Section 11.4, if either Party is involved in litigation in the Province of Ontario with a third party (“Third Party Litigation”) and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Services Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Services Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Services Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Services Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Services Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Services Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Services Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Services Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Services Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Services Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

12. Miscellaneous

- 12.1 Service Provider and Owner shall diligently carry out their respective obligations under this Services Agreement during the pendency of any Disputes, including without limitation adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Service Provider's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Service Provider shall proceed in accordance with the direction of Owner, and in the event the matter in dispute is determined in favour of Service Provider, proceeding in accordance with Owner's position shall: (i) subject to and in accordance with Section 39, be treated as a Delay Event; (ii) subject to and in accordance with Section 40, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 15 – Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 2 of this Schedule 20, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 12.2 Nothing contained in this Schedule 20 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 12.3 Interest on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 3 and 4, and interest on an award or judgment, shall be payable at the Default Interest Rate, accruing:
- (a) for amounts payable by Service Provider to Owner, from the date of any overpayment to Service Provider or, as applicable, from the date on which payment was due under this Services Agreement to Owner; or
 - (b) for amounts payable by Owner to Service Provider, from the date on which payment was due under this Services Agreement to Service Provider.
- 12.4 Service Provider shall ensure that any and all documents and other information in the possession or control of any Service Provider Party that are available to Service Provider and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 3 and 4, or by an arbitrator or court of competent jurisdiction, are made available in a timely manner to Owner and the Owner Representative.
- 12.5 Owner shall ensure that any and all documents and other information in the possession or control of any Owner Party that are available to Owner and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 3 and 4, or by an arbitrator or court of competent jurisdiction, are made available in a timely manner to Service Provider and the Service Provider Representative.
- 12.6 The Parties can, by written agreement, on a Dispute by Dispute basis:

- (a) extend any or all timelines set out in this Schedule 20;
- (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 or 9;
- (c) agree to resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and 8, or agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and 9, or agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and 9;
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 7 of this Schedule 20; and
- (e) agree to resolve a Dispute relating to Critical Items by adjudication, arbitration or litigation notwithstanding the requirements of Section 13 of this Schedule 20.

13. Critical Items

13.1 In the event that a Dispute relates to one or more of the following elements, features or aspects of the Project:

- (a) health and safety of the users of Highway 407 East;
- (b) issues impacting ability of Owner Party to the point that Owner might be in default;
- (c) on-going collection of Toll Revenues and User Fee Revenues (Highway 407 East);
- (d) on-going recording of trips; and
- (e) confidentiality,

the effect of which materially impedes the proper functioning of the Project Operations or the Toll System, such Dispute shall be resolved in accordance with Section 13.2 of this Schedule 20.

13.2 Any Dispute with respect to any Critical Item shall be resolved in an expeditious manner and shall not be subject to the Dispute Resolution Procedure set forth in this Schedule 20 and must be resolved to the satisfaction of Owner and Service Provider within 2 hours of being reported by Service Provider or otherwise identified by Owner. For the purposes of this Section 13, “resolved” means a proposed solution must be agreed between the Owner Representative and Service Provider within that two hour period, including a time frame for implementing a proposed solution. For greater certainty, it is understood that in

some cases the nature or extent of a Critical Item may not permit that Critical Item to be solved or otherwise resolved within two hours.

13.3 In the event that:

- (a) there is a Dispute related to a Critical Item that cannot be resolved within two hours set forth in Section 13.2 of this Schedule 20,
 - (i) as to the existence of a problem or its extent, or
 - (ii) with respect to the proposed solution, or
- (b) there is a Dispute concerning the effectiveness of any solution proposed in respect of a Critical Item

then that Dispute must be resolved by an Adjudicator in accordance with Section 6 of this Schedule 20 within one Business Day of such Adjudicator being asked to undertake such an adjudication. Decisions of the Adjudicator with respect to Disputes relating to Critical Items are final and binding with respect to the action being taken, but not with respect to the fault or the cost or timing implications of the matter in dispute. Decisions of the Adjudicator with respect to fault or the cost or timing implications shall be treated as a Dispute and determined in accordance with the provisions of the Schedule 20.

SCHEDULE 21

FUTURE TOLL ROAD OPPORTUNITIES

Further to Section 4.1(b) of the Services Agreement, in the event that Owner decides to develop future toll road opportunities and, in Owner's Sole Discretion, decides to (i) adopt the Service Provider Services and Service Provider Intellectual Property in respect of a future tolled roadway, and (ii) enter into an ownership arrangement with Service Provider or a project-specific entity in respect of providing such services to such tolled roadway, Owner and Service Provider, subject to Section 1.4(d) agree to the following:

1.1 DESIGNATION/NOTICE OF ADDITIONAL TOLL HIGHWAYS

- (a) Owner may from time to time identify an existing roadway or a site for construction of a new roadway to become a future tolled roadway. Owner shall be solely responsible for construction, maintenance, control and operation of any future tolled roadways identified pursuant to this Section 1.1.
- (b) If, further to Section 1.1(a), Owner, in its Sole Discretion, decides to adopt the Service Provider Services and Service Provider Intellectual Property in respect of any future tolled roadways, it shall provide notice to the Service Provider of Owner's decision, setting out the plans and scope of services in respect of such future tolled roadway in reasonable detail (the "**Opportunity Notice**").
- (c) Within 45 days of the receipt of the Opportunity Notice, Owner and Service Provider shall, in good faith and acting reasonably, commence negotiations to develop, execute and deliver such agreements and documents (the "**Governing Agreement**") as may be necessary to give effect to Owner and Service Provider's rights and obligations in respect of such future tolled roadway identified in the Opportunity Notice and which shall be consistent with the provisions of this Schedule 21.

1.2 OPPORTUNITY SERVICES AND SERVICE PAYMENTS

- (a) Subject to Sections 1.1(c), 1.2(b), 1.3 and 1.4, in respect of any future tolled roadway identified in the Opportunity Notice, Service Provider, or a project-specific entity, shall provide tolling and back office services for such future tolled roadway, including any capital, equipment, system modifications and personnel necessary to provide these services in a manner similar to the Service Provider Services and the terms of the Services Agreement (the "**Opportunity Services**").
- (b) As soon as is commercially practicable after the receipt of the Opportunity Notice, Owner and Service Provider, shall, in good faith and acting reasonably, negotiate and attempt to establish, the rate and structure of service payment that will be payable to Service Provider, or a project-specific entity, in exchange for the Opportunity Services provided in respect of such future tolled roadway identified in the Opportunity Notice. In the event that the Parties fail to agree on the rate and structure of such service payment, the Owner may, in its Sole Discretion, withdraw the Opportunity Notice and cease to proceed with

the Service Provider in respect of such future tolled roadway identified in the Opportunity Notice.

1.3 INDEPENDENT VALUATOR

- (c) In the event that Owner and Service Provider are able to agree on the rate and structure of service payments under Section 1.2(b), Owner and Service Provider shall, in good faith and acting reasonably, attempt to identify and retain a mutually acceptable independent valuator for the purposes set out in Section 1.3(d) (the “**Independent Valuator**”). The Independent Valuator appointed under this Section 1.3 shall not be an Affiliate of the Owner or of the Service Provider or any Service Provider Party.
- (d) The cost of the services of the Independent Valuator shall be borne equally by Owner and Service Provider.
- (e) Upon appointment of the Independent Valuator, Owner and Service Provider shall supply the Independent Valuator with proposed ownership ratios of Service Provider or project specific entity and other relevant information.
- (f) The Independent Valuator shall conduct such enquiries as it deems necessary to ascertain the value of the Opportunity Services to the Service Provider, or project-specific entity, taking into account the agreed-to rate and structure of service payments that Owner and Service Provider agreed to under Section 1.2 for the purposes of determining the minority ownership interests of Owner of the Service Provider or the project-specific entity, as applicable. The valuation of the Independent Valuator under this Section 1.3 shall be subject to the agreement of Owner and Service Provider, each acting in their sole discretion. In the event that Owner and Service Provider disagree with the Independent Valuator and are unable to agree on the value of the Opportunity Services to the Service Provider, or project-specific entity, either Owner or Service Provider may provide notice to the other that it is ceasing negotiations in relation to the Opportunity Services and the related Governing Agreement and there shall be no further obligation between Owner and Service Provider in respect of those Opportunity Services and related Governing Agreement.

1.4 RELATIONSHIP OF OWNER AND SERVICE PROVIDER

- (g) Owner and Service Provider shall, in good faith and acting reasonably, negotiate the terms of a shareholder agreement, a partnership agreement or other ownership rights agreement (the “**Shareholder Agreement**”), as applicable, to set out the desired business structure and governing terms and conditions between the Parties in respect of the ownership of Service Provider or a project specific entity providing the Opportunity Services to the future tolled roadway identified by Owner in the Opportunity Notice.
- (h) Owner is to acquire a minority equity interest in Service Provider, or a project-specific entity, as applicable, in accordance with the Shareholder Agreement (which agreement is subject to the agreement of the Parties). The Service Provider is to retain primary responsibility for operational decisions and the provision of the Opportunity Services and

will retain the Intellectual Property in respect of Service Provider or such project-specific entity providing the Opportunity Services to such future tolled roadway in accordance with the Governing Agreement (which agreement is subject to the agreement of the Parties).

- (i) Except as may be set out in the Governing Agreement, this Schedule 21 is not intended to and does not create or establish between the Parties, or between Owner and any Service Provider Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as may be provided in the Governing Agreement), of principal and agent, and does not create or establish any relationship whatsoever between Owner and any representative or employee of Service Provider or the Service Provider Parties.

1.5 GENERAL

- (j) Notwithstanding anything contained in Section 4.1(b) of the Services Agreement or in this Schedule 21, neither any Governing Agreement, Shareholder Agreement, nor any agreement related to the subject matter of this Schedule 21 shall be effective (including the right of Owner to adopt the Service Provider Services and Service Provider Intellectual Property for a future tolled Roadway) unless expressly entered into in writing by each of the Parties and the entering into of same shall be subject to the sole discretion of each Party.

SCHEDULE 22

TERMINATION/EXPIRY SERVICES

1.1 TERMINATION ASSISTANCE SERVICES.

- (a) Service Provider acknowledges that it must cooperate with Owner to provide the Service Provider Services during the Termination Assistance Period (as defined herein) and to ensure the orderly transfer to Owner of the property and rights of Owner used by Service Provider in providing the Service Provider Services and the Toll System Field Equipment on termination or expiration of this Services Agreement regardless of the reason for termination and provide assistance in the transition of such Owner property and rights (the “**Termination Assistance Services**”). Owner agrees to pay for the Termination Assistance Services and cooperate with Service Provider in Service Provider’s provision of the Termination Assistance Services; provided, however, if Service Provider terminated the Services Agreement under Section 40 in respect of Section 40.1(a)(i), Service Provider’s obligation to provide Termination Assistance Services will be subject to Owner (i) paying all amounts outstanding under the Services Agreement as of the date of termination and (ii) paying the monthly amounts outstanding for all Termination Assistance Services. Owner may therefore, by notice in writing, direct Service Provider to perform, and, if so directed, Service Provider shall perform the Termination Assistance Services in connection with migrating the property and rights of Owner used by Service Provider in providing the Service Provider Services to Owner or another service provider (the “**Next Service Provider**”) and this Services Agreement shall continue in full force and effect until the completion of the Termination Assistance Services. Service Provider and Owner agree that they shall negotiate in good-faith and implement a plan that will govern the delivery by Service Provider of the Termination Assistance Services and the obligations of Service Provider and Owner during the duration of the Termination Assistance Services provided, however, such duration will not be more than [Redacted] (the “**Termination Assistance Period**”).
- (b) If Service Provider fails to provide the Termination Assistance Services, then all Owner’s costs arising as a result of such failure shall be considered Direct Losses provided that Service Provider will not be liable for any such costs that arise because such failures are directly attributable to the action or inaction of Owner which agrees to cooperate with Service Provider to help ensure that the Termination Assistance Services are provided. Further, if Service Provider does not provide the Termination Assistance Services, it shall provide access to such information and facilities in respect of the property and rights of the Owner (subject to third party intellectual property rights and confidentiality obligations) so as to allow Owner or the Next Service Provider to attempt to provide the required Termination Assistance Services.

- (c) The Termination Assistance Services shall be provided by Service Provider at commercially reasonable time and materials rates consistent with industry standard rates in effect at the time of Termination, other than in respect of the Service Provider Services conducted as part of the Termination Assistance Services which will be at the rates and for the amounts determined pursuant to this Services Agreement.
- (d) The provisions of the Service Agreement shall continue during the Termination Assistance Period.
- (e) The Termination Assistance Services shall also include providing Owner and its agents, contractors, and consultants, as necessary, with reasonable access to service personnel during Service Provider’s regular business hours.
- (f) Termination Assistance Services shall include, but are not limited to, the following (subject to third party intellectual property rights and confidentiality obligations where the services do not involve the transfer of property of the Owner):
 - (i) Pre-migration Services:
 - (A) Analysing space required for the customer databases.
 - (B) Delivering an operating procedures manual for the Toll System Field Equipment and reviewing same with new operations staff.
 - (C) Providing procedural orientation to new operations staff.
 - (D) Participating in the preparation of a transition plan setting forth the respective tasks to be accomplished by Service Provider and Owner during the Termination Assistance Period to ensure the orderly transition to Owner or the New Service Provider and a schedule pursuant to which the assigned tasks are to be completed.
 - (ii) Migration Services:
 - (A) Providing accurate and complete answers to all of Owner or the Next Service Provider’s questions regarding the Toll System Field Equipment and any Owner property and rights being transferred to Owner or Next Service Provider.
 - (B) Providing to Owner or the Next Service Provider a current copy of a complete set of technical specifications and documentation used by Service Provider in providing the Toll System Field Equipment (subject to payment of applicable licence fees to third party equipment manufacturers) and in respect of any Owner property and rights being transferred to Owner or Next Service Provider on the

understanding that if any such materials contain any Confidential Information or other proprietary information of Service Provider, they shall be so identified by Service Provider and Owner or the Next Service Provider shall execute a confidentiality agreement and agree to use such information solely for the purpose of delivering services to Owner and for no other purpose.

- (C) Providing a complete list and a detailed description of the equipment and software that comprise the Toll System Field Equipment.
- (D) Identifying to Owner any changes to the Service Provider Services or their scope during the Termination Assistance Period.
- (E) Delivering to Owner all Project Data on their present media.
- (F) Providing the third party software at its then-current license charges for such software during the Termination Assistance Period.
- (G) Subject to Owner entering into a license with the third party provider, providing Owner with the license(s) for the third party software or intellectual property not owned by Owner used in the Toll System Field Equipment (excluding the de-encryption technology). Owner shall be liable for any license fees or other costs required by the licensor(s) for such assignment or transfer of license(s).
- (H) Assisting Owner in acquiring any necessary rights to access and use any other systems and documentation then being used by Service Provider for provision of the Service Provider Services, it being understood that obligation does not require Service Provider to licence any of its Intellectual Property rights to Owner.
- (I) Upon Owner's request, assisting Owner in engaging any third party services then being utilized by Service Provider to perform the Service Provider Services on the best terms and conditions which can be made available from the third party source, and using its commercially reasonable efforts (without any obligation to pay or incur any fee or charge) to remove any non-competition requirements that Service Provider may have contracted with the third party source which would adversely impact on the third party source's ability to perform the Service Provider Services for Owner.
- (J) Transferring the Toll System Field Equipment held by Service Provider, if any, to Owner or the Next Service Provider.

- (K) Unloading the databases and transferring all Project Data and information pursuant to any reports required under Schedule 19 – Record Provisions and Schedule 28 – Output Specifications to Owner or the Next Service Provider.
 - (L) Transferring all Highway 407 East user records, account data, call logs, dispute records and information to Owner or the Next Service Provider.
 - (M) Assisting with the loading of the databases.
 - (N) Assisting with the Project communications migration.
 - (O) Providing reasonable assistance with respect to assisting in the execution of a parallel operation, if necessary, until the effective date of termination of this Services Agreement.
- (g) If any Termination Assistance Services provided by Service Provider require the utilization of additional resources that Service Provider would not otherwise use in the performance of the Service Provider Services, Owner shall pay Service Provider for such usage at its then-current rates, taking into consideration all its normal discounts. If the Termination Assistance Services require Service Provider to incur expenses in addition to the expenses that Service Provider would otherwise incur in the performance of this Services Agreement, then Owner shall reimburse Service Provider for such reasonable and agreed upon additional expenses.
- (h) Owner acknowledges that the proper operation and maintenance of the Toll System Field Equipment and Toll System by persons other than Service Provider will require licenses from and/or service arrangements with certain specific third parties (e.g., Raytheon) who possess the Intellectual Property and skills necessary for the proper operation and maintenance the Toll System Field Equipment and Toll System and therefore the Termination Assistance Services undertaken by Service Provider may not sufficiently prepare Owner or New Service Provider to operate and maintain the Toll System Field Equipment and Toll System without the assistance of such third parties.

SCHEDULE 23

PARTIAL AND SETTLEMENT PAYMENTS

[Redacted]

SCHEDULE 24

MISCELLANEOUS COLLECTION PROCEDURES

Definitions

Unless otherwise specified or the context otherwise requires, for the purposes of this Schedule 24 the following terms have the following meanings:

“**Daily Electronic File**” means the daily electronic file supplied by the Service Provider containing a listing of plates to be denied with the Highway 407 East Charges owed in respect of them, updates on dollar amounts to be refreshed on plates already posted for denial and a listing of plates that are to be removed from the denial process because of payment.

“**Heavy-Multiple Unit**” means trucks or tractors with one (1) or more trailers.

“**Heavy-Single Unit**” means single unit trucks, tractors, school buses, transit buses or inter-city buses weighing over five thousand (5,000) kilograms.

“**Highway 407 East Charge**” means any Toll Rates, User Fee Revenues (Highway 407 East) and interest thereon.

“**Highway 407 East Charge Plate Denial**” means the refusal by the Registrar of Motor Vehicles to validate a Person’s vehicle permit or the refusal to issue a vehicle permit to the Person for failure to pay a Highway 407 East Charge within the time period specified in the *Highway 407 Act, 1998* (Ontario).

“**Ministry**” means the Ministry of Transportation of Ontario.

“**Standard Vehicle**” means any vehicle which is (i) not a Heavy-Single Unit or a Heavy-Multiple Unit, (ii) not exempt from tolls on Highway 407 East, and (iii) equipped with operating monitoring and collection technology prescribed and validated pursuant to the *Highway 407 Act, 1998* (Ontario).

Unless defined herein, capitalized terms used in this Agreement have the meanings ascribed to them in the Service Agreement.

1. Electronic Link

The Owner shall ensure the establishment of an electronic link between the Ministry and the Service Provider to facilitate:

- (i) posting of Highway 407 East Charge Plate Denials;
- (ii) updating and/or deleting Highway 407 East Charge Plate Denials and amounts owed, in response to a Daily Electronic File;

- (iii) collecting outstanding Highway 407 East Charges by the Ministry, and informing the Service Provider on a daily basis of Highway 407 East Charges collected by the Ministry; and
- (iv) directing the Ministry to remit the outstanding Highway 407 East Charges collected by the Ministry to the Owner.

2. Service Provider Responsibility

2.1 Anonymous Accounts

The Service Provider shall permit any Person desiring to do so to open an anonymous account with respect to the operation of a Standard Vehicle on Highway 407 East. The Service Provider shall not:

- (a) require any Personal information in order for an anonymous account to be opened;
- (b) send any bill or invoice for payment of Highway 407 East Charges to the holder of an anonymous account in good standing.

The Service Provider may, however,

- (c) require the holder of an anonymous account to use monitoring and collection technology prescribed and validated pursuant to the *Highway 407 Act, 1998* (Ontario); and
- (d) require the holder of an anonymous account to make prepayments prior to using Highway 407 East.

2.2 Option re Marketing

After the expiry of three months from the Phase 1 Substantial Completion Date, the Phase 2a Substantial Completion Date, and the Phase 2b Substantial Completion Date, as applicable, the Service Provider shall incorporate into the first invoice sent to any Person using Highway 407 East an option by which such user may elect not to receive any promotional material disseminated by the Service Provider with respect to Highway 407 East.

3. Charges

The Owner shall: (i) charge the Service Provider such fees for any services required in the plate denial process and (ii) provide such information to Service Provider, in either case on the same basis set out in Schedule 23 – Tolling Collection/Enforcement Procedures of the CGLA, as the same may be amended from time to time.

SCHEDULE 25

TARGET PRICE AND BASE PROGRESS PAYMENTS

1. Price and Adjustments

- (a) [Redacted]
- (b) [Redacted]
- (c) [Redacted]
- (d) [Redacted]
- (e) [Redacted]
- (f) [Redacted]
- (g) The Parties agree that the Phase 1 Target Price and Phase 2 Target Price may be adjusted upwards or downwards, provided that such adjustment is agreed upon in writing between Service Provider and Owner in accordance with this Services Agreement. Following such change to the Phase 1 Target Price or the Phase 2 Target Price, the Phase 1 Price Cap or Phase 2 Price Cap, as applicable, will be increased or decreased, dollar for dollar, by the amount by which the Phase 1 Target Price or Phase 2 Target Price increased or decreased.
- (h) [Redacted]
- (i) Service Provider invoices in respect of the costs of the Works shall be subject to the applicable terms of Section 29 of the Services Agreement. Service Provider shall include with each invoice such supporting documentation as Owner may reasonably require in connection with the claimed base progress payments, including any cumulative projected variance from the Phase 1 Target Price or Phase 2 Target Price. Each application for payment and invoice submitted to Owner shall be in a form agreed to by the Parties, acting reasonably, and shall include either at the time of submittal or be provided by the end of the next quarter as may be necessary to confirm the achievement of the claimed base progress payments: (i) such true copies of invoices (with originals to be provided within six months of Final Phase 1 Completion or the Final Phase 2b Completion, as applicable), purchase orders or other documentation in each case marked paid so as to support an “open-book” pricing approach and (ii) the details of the Service Provider Markup in respect thereof (the “**Open Book Documentation**”).

2. Base Progress Payments

- (a) Applications for payment on account may be made up to four times annually (but not more than one application in any month) as the Works progress.

- (b) The Parties agree that for the purpose of calculating base progress payments hereunder the amount of any applicable Legislative Holdback (as defined in Schedule 16) shall be withheld. Furthermore, Owner may hold back an amount equal to one half of the Service Provider Markup payable as part of the particular payment, until the aggregate amount of the Service Provider Markup withheld from all payments equals \$[Redacted] for each of Phase 1 and Phase 2.
- (c) Application for payment invoiced by Service Provider shall be dated the last day of month and the amount claimed shall be based on the value of the activities completed in the payment period in accordance with the Activity Cost Listing set out in Appendix A – 407 East Tolling and Back Office Milestone Payment Schedule, as certified by the Independent Certifier, at that date.
- (d) Every six months, the amount of any invoices paid by Owner in the preceding six-month period shall be reconciled against actual Open Book Documentation in respect of such preceding six-month period and any deficit therein shall be added to Owner’s invoice in the next application for payment and any excess therein shall be deducted from Owner’s invoice in the next application for payment.

3. Substantial Completion Payment

- (a) Upon the Phase 1 Substantial Completion or Phase 2b Substantial Completion, as applicable, Owner shall pay to Service Provider, subject to the Phase 1 Price Cap or Phase 2 Price Cap, as applicable and as set out herein, the difference between the actual costs of the Works for Phase 1 or Phase 2 (including any Service Provider Markup) and the sum of the base progress payments plus (i) any applicable Target Price Reduction Incentive Amount and (ii) the held back portion of the Service Provider Markup pursuant to Section 2(b).

4. Delay in Substantial Completion

In addition to any other remedy in the Services Agreement, in the event Service Provider fails to achieve the

- (a) Phase 1 Substantial Completion by the Scheduled Phase 1 Substantial Completion Date,
- (b) Phase 2a Substantial Completion by the Scheduled Phase 2a Substantial Completion Date, or
- (c) Phase 2b Substantial Completion by the Scheduled Phase 2b Substantial Completion Date

Service Provider shall pay to Owner, as liquidated damages and not as a penalty, and without prejudice to Owner’s right to terminate pursuant to Section 39.1(a)(iii), as its sole financial remedy for such failure, for each day that Phase 1 Substantial Completion, Phase 2a Substantial Completion or Phase 2b Substantial Completion is not achieved, except as caused by Owner or any Owner Party, calculated as follows:

liquidated damages will begin to be payable:

- a. in respect of Phase 1 Substantial Completion
 - i. **[Redacted]** if the last toll site is made available to Service Provider for the installation of the Works on or before **[Redacted]**;
 - ii. **[Redacted]** after the date the last toll site is made available to Service Provider for the installation of the Works if such date is between **[Redacted]** and **[Redacted]**; or
 - iii. **[Redacted]** after the date the last toll site is made available to Service Provider for the installation of the Works if such date is on or after **[Redacted]**;
- b. in respect of Phase 2a Substantial Completion
 - i. 120 days after **[Redacted]** if the last toll site is made available to Service Provider for the installation of the Works on or before **[Redacted]**;
 - ii. 150 days after the date the last toll site is made available to Service Provider for the installation of the Works if such date is between **[Redacted]** and **[Redacted]**; or
 - iii. 180 days after the date the last toll site is made available to Service Provider for the installation of the Works if such date is on or after **[Redacted]**;
- c. in respect of Phase 2b Substantial Completion
 - i. 120 days after **[Redacted]** if the last toll site is made available to Service Provider for the installation of the Works on or before **[Redacted]**;
 - ii. 150 days after the date the last toll site is made available to Service Provider for the installation of the Works if such date is between **[Redacted]** and **[Redacted]**; or
 - iii. 180 days after the date the last toll site is made available to Service Provider for the installation of the Works if such date is on or after **[Redacted]**;

(in each case, the “LD Start Date”),

for the first 60 days including and following the LD Start Date, Service Provider shall pay the amount of \$**[Redacted]** per day and thereafter \$**[Redacted]** per day, subject to an aggregate cap of \$**[Redacted]**.

Appendix A

407 East Tolling and Back Office Milestone Payment Schedule

[Redacted]

SCHEDULE 26

USER FEE PROTOCOL

1. The Parties acknowledge that the fees listed in this Schedule 26 – User Fee Protocol are in effect at the Amended and Restated Effective Date and do not represent new fees.
2. No new User Fees (Highway 407 East) that are to apply to users of Highway 407 East can be introduced by the Service Provider without the consent of the Owner.
3. Notwithstanding anything in this Services Agreement, neither Service Provider nor 407 ETR Limited shall be limited in any respect whatsoever from dealing with, in any manner Service Provider or 407 ETR Limited sees fit in its sole and absolute discretion, the User Fees (407ETR), including without limitation, introducing, setting, controlling, changing, managing and revoking such fees.
4. In accordance with Sections 10.2(b)(xv) and 10.2(d)(vii), respectively, of the Amended and Restated Tolling Services Agreement, Service Provider shall provide notice to the Toll System Management Committee of any future changes that Service Provider intends to implement and which the Service Provider reasonably believes (A) will materially affect the customer experiences of users of Highway 407 East or (B) could affect the amount of Toll Rates and User Fees of the Owner.

User Fees (Highway 407 East) Schedule – Initial Ten Year term

[Redacted]

SCHEDULE 27

OWNER DELIVERABLES

1. Owner shall complete any required acquisition or expropriation of real property necessary for the Toll System Field Equipment installation and operation consistent with the Works Schedule.
2. Owner shall, and shall cause any applicable Owner Parties to, provide Service Provider with the Owner Party Design Data to facilitate the Works.
3. Owner shall, and shall cause any Owner Party to, work cooperatively with Service Provider to provide Service Provider with the civil works (including without limitation all civil and electrical infrastructure associated with the Toll System Field Equipment) Service Provider requires for timely completion of the Works.
4. Owner shall provide instructions to Service Provider in respect of the location of the interchanges, location of additional duct banks and in respect of ATMS (Advanced Traffic Management System). Owner may permit Service Provider to install fibre optic communications cable through spare ATMS ducts, if available.
5. Owner shall provide Service Provider with the kilometeric distances between interchanges for the purposes of billing Highway 407 East users.
6. Owner shall provide electricity and other utilities necessary to power the Toll System Field Equipment following Service Provider providing Owner with the power specifications required by the Toll System Field Equipment.
7. Owner shall provide Service Provider with the Notice to Proceed no less than 30 months prior to the Scheduled Phase 1 Substantial Completion Date (as such date may be modified pursuant to the Services Agreement).
8. Owner shall develop, draft and provide material, with full control of messaging and communications subject matter, for the Highway 407 East website, bill inserts and other communications intended for users of and the operation of Highway 407 East, in accordance with technical specifications provided by Service Provider from time to time.
9. Owner and Owner Representative will, throughout the currency of the Services Agreement, remain available for timely decision-making.
10. Owner shall provide or complete or cause an Owner Party (i.e., the road builder) to provide or complete all items and tasks that Owner or an Owner Party is responsible pursuant to, and according to the key dates specified in, Schedule 4 - Tolling Infrastructure Works.

11. Owner shall, by June 30, 2016, provide, or cause an Owner Party to provide, to Service Provider the (1) configuration of interchanges, (2) direction of ramps, and (3) naming convention at interchanges, of Highway 407 East, Phase 2a and Phase 2b.

SCHEDULE 28
OUTPUT SPECIFICATIONS

[Redacted]